United States Court of Appeals

for the Second Circuit

APPENDIX

76-4248

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

WILLIAM GELLER and DORIS GELLER,
Petitioners-Appellants

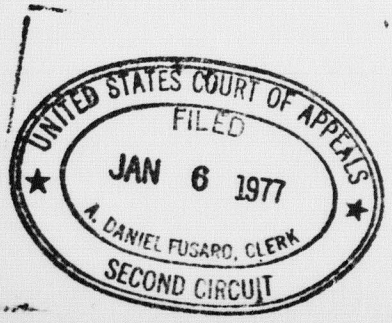
v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee

B
P/S

APPENDIX

ON APPEAL FROM A DECISION OF THE
UNITED STATES TAX COURT



PAGINATION AS IN ORIGINAL COPY

INDEX

	APPENDIX PAGE NO.
Copy of relevant docket entries	(ii)
Notice of Deficiency, with Statements	A1
Petition	A5
Answer of Commissioner of Internal Revenue	A7
Opinion of Tax Court	A12
Decision of Tax Court	A43
Transcript of proceedings before Tax Court (Excerpts)	
(a)Preliminary proceedings	A44-A68
(b)William Geller	
Pro se	A68-A74
Cross	A74-A80
(c)Robert Schulman	
Direct	A80-A87
(d)Clinton A. Burke	
Direct	A88-A89
(e)Marvin Brown	
Direct	A90-A91
Cross	A92-A97
(f) Mason S. Greenland	
Direct	A98-A100
Cross	A101-A103
(g)William Geller	
Pro Se, continued	A104-A106
(h)Robert Schulman	
Direct, continued	A107-A128
Cross	A128-A131
Redirect	A131-A140
Recross	A140-A144
Respondent's Exhibit AJ,Articles of Incorporation	A145-A147

UNITED STATES TAX COURT
GENERAL DOCKET

DOCKET NO. 4046-73

WILLIAM GELLER DORIS GELLER 3280 Rochambeau Ave. New York, N.Y. 10467 PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.	APPEARANCES FOR PETITIONER: NAME ADDRESS

Date Month Day Year	Filings and Proceedings	Action	Served
June 4, 1973	PETITION FILED: FEE PAID June 4, 1973		June 5, 1973
June 4, 1973	REQUEST by Petr. for trial at New York, N.Y. filed,	GRANTED June 5, 1973	June 5,1973
Aug. 6, 1973	ANSWER by Resp. filed.		Aug. 7, 1973
Nov. 19, 1975	NOTICE OF TRIAL on Feb. 23, 1976 at New York, N.Y.		Nov. 19, 1975
Feb. 23 & Feb. 25, 1976	TRIAL at New York, New York before Judge Quealy.		
	SIMULTANEOUS: ORIGINAL BRIEFS DUE: April 11, 1976		
	REPLY BRIEFS DUE: May 11, 1976		
	SUBMITTED TO JUDGE QUEALY		
March 17, 1976	TRANSCRIPT of Feb. 25, 1976 rec'd.		
Mar. 18, 1976	TRANSCRIPT of Feb. 23, 1976 rec'd.		
Apr. 5, 1976	MOTION by Resp. for extension of time to May 11, 1976 within which to file Original Brief.	See Order April 7, 1976	
April 7, 1976	ORDER that resp. motion filed April 5, 1976 is GRANTED and the time within which resp. is to file his original brief is extended from April 11, 1976 to and including May 11, 1976.		APR 9 1976
May 7, 1976	BRIEF for Petr. filed.		MAY 12 1976
May 11, 1976	BRIEF for Resp. filed.		MAY 12 1976
June 3, 1976	REPLY BRIEF filed by petr.		JUN 11 1976

cont. on page 2

(ii)

DOCKET NO. 4046-73

(Continuation)

WILLIAM & DORIS GELLER — PETITIONER — PAGE 2

Date (Month Day Year)	Filings and Proceedings	Action	Served
June 10, 1976	REPLY BRIEF filed by resp.		JUN 11 1976
Aug. 18, 1976	MEMORANDUM FINDINGS OF FACT & OPINION filed, Judge Quealy.		AUG 18 1976
	Decision will be entered for the resp.		
Aug. 18, 1976	DECISION ENTERED, Judge Quealy.		Aug. 18, 1976
	APPELLATE PROCEEDINGS		
Nov. 5, 1976	NOTICE OF APPEAL to U.S.C.A., Second Circuit, filed by	Petrs.	Nov. 8, 1976
Nov. 5, 1976	NOTICE of Filing with copy of notice of appeal mailed		
	to Mr. Meade Whitaker, Chief Counsel.		Nov. 8, 1976
Nov. 5, 1976	NOTICE, to parties, of assembling and date for trans-		
	mission of the record.		Nov. 8, 1976
Nov. 17, 1976	U.S.C.A., 2nd Circuit Civil Appeal Scheduling Order		
	that record be filed in C.A. on or before 11/30/76 filed.		Nov. 17, 1976
Nov. 17, 1976	ORDER that the Clerk is directed to file the Scheduling		
	order this date and said Clerk is directed to transmit the		
	record on appeal on or before November 30, 1976.		Nov. 17, 1976

GPO 1973 O - 479-653

Address any reply to: P.O. Box 3100, Church St. Sta., New York, N.Y. 10008

Department of the Treasury

District Director

Internal Revenue Service

Date: MAR 12 1973

In reply refer to: AU:R:90D

Tel: 264-3109

Dr. William Geller and
Mrs. Doris Geller
3280 Rochambeau Avenue
Bronx, New York 10467

Dear Sir and Madam:

Taxable Year Ended	Deficiency Tax	Addition to the tax section 6653(b)	Liability of Doris Geller Limited to Deficiency of: Tax
December 31, 1965	$111,123.57	$55,561.79	$111,123.57
December 31, 1966	5,598.89	2,799.45	5,598.89

In accordance with the provisions of existing internal revenue laws, notice is given that the determination of your income tax liability for the taxable years ended December 31, 1965 and December 31, 1966 discloses deficiencies in tax and additions to the tax as set forth above. The attached statement shows the computation of the deficiencies and additions to the tax.

If you do not intend to contest this determination in the United States Tax Court, please sign and return the enclosed waiver form. This will permit an early assessment of the deficiencies and limit the accumulation of interest. The enclosed self-addressed envelope is for your convenience.

If you decide not to sign and return the waiver, the law requires that after 90 days from the date of mailing this letter (150 days if this letter is addressed to you outside the United States and the District of Columbia) we assess and bill you for the deficiencies. However, if within the time stated you contest this determination by filing a petition with the United States Tax Court, Box 70, Washington, D.C. 20044, we may not assess any deficiencies and bill you until after the Tax Court has decided your case. You may obtain a copy of the rules for filing a petition by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

A1

Statement

William Geller and
Doris Geller
3280 Rochambeau Avenue
Bronx, New York 10467

Tax Liability for the Taxable Years Ended

December 31, 1965
December 31, 1966

Income Tax

Taxable Year Ended	Deficiency Tax	Addition to the tax section 6653(b)	Liability of Doris Geller Limited to Deficiency of: Tax
December 31, 1965	$111,123.57	$55,561.79	$111,123.57
December 31, 1966	5,598.89	2,799.45	5,598.89

The stated deficiencies and additions to the tax are based on adjustments and explanations set forth in detail below.

It is determined that all or part of the underpayment of tax required to be shown on the tax returns for the taxable years 1965 and 1966 is due to fraud. Consequently, the 50% per cent addition to the tax provided by section 6653(b) of the Internal Revenue Code of 1954 is asserted for each of those years. Since no part of the underpayment is due to fraud on the part of Doris Geller, this addition to tax does not apply to her.

A2

Taxable Year Ended December 31, 1965
Adjustments to Income
and
Computation of Tax

Adjusted gross income disclosed by return		$110.00
Increase (decrease) in income:		
(a) Other income	$203,612.78	
(b) Business loss - Schedule C	(17.68)	
(c) Standard deduction	(1,000.00)	
(d) Exemptions (5)	(3,000.00)	199,595.10
Taxable income adjusted		$200,205.10
Corrected income tax liability		$111,123.57
Income tax liability disclosed by return		none
Deficiency in income tax		$111,123.57
Addition to the tax for fraud Code section 6653(b) applicable to William Celler only.		
Addition to the tax under section 6653(b) 50% of $111,123.57		$ 55,561.79

Explanation of Adjustments

(a) - It is determined that you realized unreported taxable income in the amount of $203,612.78 for the taxable year 1965 and $24,151.25 for the taxable year 1966 representing unexplained deposits in the brokerage account of Wolf Geller with Merrill, Lynch, Pierce, Fenner & Smith, Inc. of which were not verified or explained.

(b) - You are allowed a deduction in the amount shown for business loss.

(c) (d) - You are allowed the standard deduction provided by Code section 141; and you are allowed five exemptions as indicated on your return.

A 3

Taxable Year Ended December 31, 1966
Adjustments to Income
and
Computation of Tax

Adjusted gross income disclosed by return		$3,092.15
Increase (decrease) in income:		
(a) Other income	$24,151.25	
(b) Standard deduction	(1,000.00)	
(c) Exemptions (4)	(2,400.00)	20,751.25
Taxable income adjusted		$23,843.40
Tax on above		$ 5,609.89
Plus: Self - employment tax		190.17
Corrected income tax liability		$ 5,800.06
Income tax liability disclosed by return		201.17
Deficiency in income tax		$ 5,598.89
Addition to the tax for fraud Code section 6653(b) applicable to William Geller only.		
Addition to the tax under section 6653(b) 50% of $5,598.89		$ 2,799.45

Explanation of Adjustments

(a) - See explanation (a) for taxable year ended December 31, 1965.

(b) (c) - You are allowed the standard deduction provided by Code section 141; and you are allowed four exemptions as indicated on your return.

A4

UNITED STATES TAX COURT

TAX COURT
MAIL ROOM
1973 JUN 4 AM 11 07

FILED
1973 JUN 4 AM 11 15
UNITED STATES
TAX COURT

William Geller
Doris Geller
Petitioner(s)

v.

COMMISSIONER OF INTERNAL REVENUE
Respondent

Docket No. 4046-73

PETITION

1. Petitioner(s) request(s) the Court to redetermine the tax deficiency(ies) for the year(s) 1965 and 1966, as set forth in the notice of deficiency, a copy of which is attached. The notice was issued by the Office of the Internal Revenue Service at New York, N.Y. (City and State)

2. Petitioner(s) taxpayer identification (e.g. social security number(s) is (are) W.G. 094-30-5185-A D.G. 099-34-3356

3. Petitioner(s) make(s) the following claims as to his tax liability:

Year	Amount of Deficiency Disputed	Amount of Addition to Tax, if any, Disputed	Amount of overpayment claimed
1965	$111,123.57	$55,561.79	
1966	5 598.89	2,799.45	

SERVED JUN-5 1973

T.C. Form a-S
(Oct. 1970)
Page1

PLEASE REMOVE CARBONS BEFORE MAILING

BEST COPY AVAILABLE

A5

4. The Commissioner of Internal Revenue made the following errors in determining this(these) tax deficiency(ies):

a. I, William Geller,am not Wolf Geller.

b. We, William Geller & Doris Geller did NOT realize any income in 1965 & 1966 which was NOT reported.

c. No Fraud of any sort has been committed & therefore the Statute of limitation has expired.

5. Petitioner(s) assert(s) the following facts to support the assignment(s) of error(s) set out in paragraph 4. (In your own words, describe fully the facts in support of your claim; use additional pages if necessary):

a. The Internal Revenue has never asked me or my wife Doris Geller for any explanation or auditing of my 1965 &1966 Income Tax. The first knowledge we had in this matter was on March 12,1973. Such action is arbitrary and capricious. My United States constitutional rights were violated. NO Fraud was committed by me and therefore the Statute of Limitation has expired. We pray that the U.S. Tax Court renders judgment for petitioner.

PLEASE REMOVE CARBONS BEFORE MAILING

A 6

UNITED STATES TAX COURT

FILED

1973 AUG 6 PM 3 20

WILLIAM GELLER and DORIS GELLER, Petitioners,	)	
v.	)	Docket No. 4046-73
COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	

ANSWER

THE RESPONDENT, in answer to the petition filed in the above-entitled case admits, denies and alleges as follows:

1. to 3., inclusive. Admits the allegations of paragraphs 1 to 3, inclusive, of the petition.

4. a. to c., inclusive. Denies that the respondent erred as alleged in subparagraphs a. to c., inclusive, of paragraph 4 of the petition.

5. a. to c., inclusive. Denies the allegations of subparagraphs a. to c., inclusive, of paragraph 5 of the petition.

6. Denies generally each and every allegation of the petition not hereinbefore specifically admitted, qualified or denied.

7. FURTHER ANSWERING the petition, and in support of the determination that a part of the underpayments of tax required

SERVED AUG 7 1973

to be shown on the income tax returns of William Geller for the taxable years 1965 and 1966 are due to fraud, the respondent alleges:

(a) During the taxable years 1965 and 1966 William Geller (hereinafter referred to as petitioner) was engaged in the practice of medicine, real estate operations and dealing in securities; petitioner also owned and controlled the 2377 Creston Corp.

(b) During the taxable years 1965 and 1966 petitioner derived unreported taxable income from each of the aforementioned business activities.

(c) During the taxable years 1965 and 1966 petitioner maintained a brokerage account with Merrill, Lynch, Pierce, Fenner and Smith in the name of Wolf Geller.

(d) Petitioner and Wolf Geller are one and the same individual.

) During the taxable year 1965 petitioner received $203,612.78 which he deposited to his account with Merrill, Lynch, Pierce, Fenner and Smith.

(f) During the year 1966 petitioner received $24,151.25 which he deposited to his account with Merrill, Lynch, Pierce, Fenner and Smith.

A8

(g) The petitioner failed to maintain, or to submit for examination by the respondent, complete and adequate books of account and records of his income-producing activities as required by applicable provisions of the Int. Rev. Code of 1954 and the regulations promulgated thereunder.

(h) The petitioner understated his taxable income for the years 1965 and 1966 in the amounts of $199,595.10 and $20,751.25, respectively.

(i) The petitioner understated his income tax liabilities for the years 1965 and 1966 in the amount of $111,123.57 and $5,598.89, respectively.

(j) The petitioner during the taxable years 1965 and 1966 did not receive any gifts.

(k) The petitioner during the taxable years 1965 and 1966 did not receive any inheritances, legacies, and devises.

(l) The petitioner's failure to maintain complete and accurate records of his income-producing activities, and his failure to produce complete and accurate records to the respondent in connection with the examination of his income tax returns for the taxable years 1965 and 1966 were fraudulent, and with intent to evade tax.

(m) The petitioner's use of the name Wolf Geller in

A9

in his brokerage account with Merrill, Lynch, Pierce, Fenner and Smith in which he deposited $203,612.78 in 1965 and $24,151.25 in 1966 was fraudulent, with intent to evade tax.

(n) The petitioner fraudulently, and with intent to evade tax, omitted from his income tax returns for the years 1965 and 1966, taxable income in the amounts of $199,595.10 and $20,751.25, respectively.

(o) A part of the underpayment of tax required to be shown as petitioner's returns for the taxable years 1965 and 1966 is due to fraud.

8. FURTHER ANSWERING the petition, and as a defense to the assignment of error that the statute of limitations bars the assessment and collection of the deficiencies in income taxes due from the petitioner for the taxable years 1965 and 1966, the respondent alleges:

(a) The income taxes due from the petitioner for the taxable years 1965 and 1966 may be assessed, or a proceeding in Court for the collection of such tax may be begun without assessment, at any time under the provisions of Int. Rev. Code of 1954, § 6501(c)(1), since the petitioner filed false or fraudulent income tax returns for said years with intent to evade tax, as is more fully set forth by the facts alleged in paragraph 7 above,

A/0

which facts are incorporated herein by reference and relied upon by the respondent as a defense to the statute of limitations issue.

WHEREFORE, it is prayed:

(1) That the relief sought in the petition be denied;

(2) That the deficiencies in income taxes for the taxable years 1965 and 1966, as set forth in the statutory notice, be in all respects approved;

(3) That the additions to the tax for the taxable years 1965 and 1966, under the provisions of Int. Rev. Code of 1954, §6653(b), as set forth in the statutory notice, be in all respects approved; and

(4) That the Court determine that the assessment and collection of the deficiencies in income taxes for the taxable years 1965 and1966, as set forth in the statutory notice, are not barred by the statute of limitations.

(Sgd) LAWRENCE B. GIBBS - EHH

LAWRENCE B. GIBBS,
Acting Chief Counsel,
Internal Revenue Service.

OF COUNSEL:

MARVIN E. HAGEN,
Regional Counsel,
LARRY KARS,
Attorney,
Internal Revenue Service,
26 Federal Plaza (12th Floor),
New York, New York 10007.

A [illegible]

T. C. Memo. 1976-257

UNITED STATES TAX COURT

WILLIAM GELLER and DORIS GELLER, Petitioners v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 4046-73. Filed August 18, 1976.

William Geller, pro se.

Gordon W. Cook and Larry Kars, for the respondent.

A12

SERVED AUG 18 1976

MEMORANDUM FINDINGS OF FACT AND OPINION

QUEALY, Judge: Respondent determined deficiencies in the Federal income taxes and additions to the tax due from the petitioners as follows:

Year	Deficiency	Addition to the tax, section 6653(b)[1]
1965	$111,123.57	$55,561.79
1966	5,598.89	2,799.45

The issues remaining for decision are as follows:

(1) Whether petitioners received unreported income in taxable years 1965 and 1966 in the amounts of $203,612.78 and $24,151.25, respectively.

(2) Whether any part of the underpayment of taxes by Dr. William Geller[2] for taxable years 1965 and 1966 is due to fraud.

---

[1] All statutory references are to the Internal Revenue Code of 1954, as amended, unless otherwise indicated.

[2] Doris Geller is a petitioner herein solely by reason of having filed joint returns with her husband. Hereinafter, references to "petitioner" are to Dr. William Geller. The respondent has conceded that Doris Geller is not liable for any addition to the tax for fraud.

A13

FINDINGS OF FACT

The parties have been unable to agree to a stipulation of facts. However, the authenticity of various documents was stipulated at trial. The exhibits so stipulated are incorporated herein by this reference.

Dr. William Geller and Doris Geller filed joint Federal income tax returns for 1965 and 1966 with the District Director of Internal Revenue, Manhattan, New York. At the time the petition in this case was filed, petitioners resided in New York, New York.

In February 1958, petitioner was indicted for income tax evasion. He pleaded guilty to the charges for taxable years 1953 and 1954. In July 1963 and in September 1964, petitioner offered to compromise the Federal income tax liabilities which at that time were $170,414.67, plus interest. In support of the 1974 offer, he filed statements of financial condition (Form 433) with the respondent which indicated that he had

assets worth $650.00 and liabilities, not including Federal income taxes, of $30,000. He did not have sufficient income to necessitate the filing of Federal income tax returns for 1956 through 1963, inclusive.

During 1965 and 1966, petitioner was a practicing medical doctor. His office was located at 135 Ridge Street, New York, New York.

Petitioner, his wife Doris, and his sister Regina Strasfeld incorporated the 2377 Creston Corporation (hereinafter sometimes referred to as the corporation) on December 28, 1950. The same three individuals were named in the certificate of incorporation as directors. The address of the corporation was listed as 135 Ridge Street, New York, New York, which is the same address as that given for petitioner and his wife.

The 2377 Creston Corporation engaged in a real estate business. It owned a building which it sold prior to 1965 at a profit. It reported gain from the sale on the installment method. Thereafter, it engaged in securities trading.

A 18-a

In its corporation income tax return filed for calendar year 1965, the corporation reported income from the installment sale of a building in the amount of $117,184.19. It reported taxable income of $70,859.70 before the dividends received deduction. The address shown on the return was c/o Geller, 135 Ridge Street, New York, New York. The return was signed by William Geller as president.

In its corporation income tax return filed for calendar year 1966, the corporation reported no installment income. It reported a taxable loss of $10,224.09. The address shown on the return was c/o Geller, 135 Ridge Street, New York, New York. The return was signed by William Geller as president.

The corporation income tax returns for 1965 and 1966, were prepared by Mason S. Greenland, an accountant, from figures supplied by petitioner. No books of original entry were provided by the petitioner. Income and expenses were totaled before the information was given to Mr. Greenland for use in the preparation of the return.

A15

The balance sheets of the corporation as shown on its tax returns for 1965 and 1966 were as follows:

Assets	12/31/64	12/31/65	12/31/66
Cash	$242,622.70	$ 12,128.48	$ -0-
Notes and accounts receivable	143,058.73	172,112.42	145,227.20
Other investments	85,120.93	44,987.90	-0-
Other assets	930.24	-0-	-0-
Total assets	$471,732.60	$229,228.80	$145,227.20

Liabilities and Capital	12/31/64	12/31/65	12/31/66
Long term mortgages and notes	$210,072.86	$ 52,282.86	$ -0-
Common stock	5,000.00	5,000.00	5,000.00
Surplus reserves	143,592.24	-0-	-0-
Earned surplus	113,067.50	171,945.94	140,227.20
Total liabilities and capital	$471,732.60	$229,228.80	$145,227.20

The change in the earned surplus figure on the balance sheet for 1965 was explained in the return as follows:

Balance at beginning of year	$113,067.50
Net income per books	71,789.94
Total surplus available	$184,857.44
Less: Distributions	-0-
Federal income taxes for 1964	12,911.50
Balance at end of year	$171,945.94

A16

There was no accounting in the return for the reduction in "surplus reserves" from $143,592.24 to zero.

The corporation income tax return for 1965 shows that two officers were compensated during the year. Murray L. Geller, petitioner's son who was 24 years old in 1965, was listed as secretary at a salary of $7,000. Irwin (also known as "Irving" or "Isaac") Geller, petitioner's son who was 21 years old in 1965, was listed as president at a salary of $5,200. No compensation of officers was shown in the 1966 return.

The 2377 Creston Corporation maintained a number of savings accounts during 1965. Petitioner had the authority to withdraw such funds on his signature. During July 1965, the following checks made payable to William Geller were drawn on corporate savings accounts:

Savings Institution	Date	Amount
West Side Federal Savings & Loan Association	7/27/65	$ 2,501.34
Knickerbocker Federal Savings & Loan Association	7/27/65	7,500.00
Knickerbocker Federal Savings & Loan Association	7/30/65	3,084.18
Queens County Federal Savings & Loan Association	7/30/65	1,981.67
Total		$15,067.19

A17

Each of the checks carried the endorsement of William Geller, followed by that of "Wolf Geller." They were also endorsed by the brokerage firm of Merrill Lynch, Pierce, Fenner & Smith.

On June 17, 1965, petitioner personally opened a brokerage account with the firm of Merrill Lynch, Pierce, Fenner & Smith (hereinafter referred to as "Merrill Lynch") in the name of "Wolf Geller." The account executive at Merrill Lynch filled out a new account card on the basis of information furnished by petitioner when the account was opened. The address listed for the account was 318 East 149th Street, Bronx, New York, which was the business address of petitioner's brother, Morris Geller. The card listed petitioner's net worth at $150,000.

According to Merrill Lynch's deposit sheets, petitioner made deposits of $203,612.78 to the account during 1965 and $24,151.25 during 1966. Among the deposits were the four checks representing withdrawals from the 2377 Creston Corporation savings accounts in July 1965 and totalling

$15,067.19. Bonds with a total cost of $203,992.38 in 1965 and $24,151.25 in 1966 were purchased for the account.

The bonds purchased were New York City Housing Authority and New York State Dormitory Revenue bonds in bearer form with coupons attached. Interest from such bonds is tax-exempt. On at least six occasions, the bonds were hand-delivered to Dr. Geller, who was usually accompanied by a young man. None of the bonds were resold through the Merrill Lynch account.

In his Federal income tax returns for 1965 and 1966, petitioner reported taxable income of $610.00 and $3,092.15, respectively. His income from the practice of medicine was reported as follows:

	1965	1966
Gross receipts	$2,881.50	$4,951.00
Business deductions	- 2,899.18	1,858.85
Gross profit	-0-	$3,092.15

Petitioner reported no dividend income in 1965 or 1966. The returns were prepared by Mason Greenland from figures supplied by petitioner.

No records were kept by petitioner to show the source or disposition of deposits to the Merrill Lynch account.

Respondent determined that petitioner understated his income for the years 1965 and 1966 by $203,612.78 and $24,151.25, respectively. After adjusting for other deductions, respondent determined that petitioner's additional tax liabilities for 1965 and 1966 were $111,123.57 and $5,598.89, with additions to the tax imposed by section 6653(b) of $55,561.79 and $2,799.45, respectively. The liability of Doris Geller was limited to the deficiencies computed without the additions to the tax imposed by section 6653(b).

On February 15, 1968, petitioner gave a sworn affidavit to the respondent. According to the affidavit, petitioner stated:

> To my knowledge this corporation (2377 Creston Corp) does not do any business as of now. * * * [T]he accountant was Albert Podrid. He did have important papers and records for this Corporation. During 1967, I asked him for the records. He told me that he destroyed them. It is my openion [sic] that he does have them but refused to give them to me. I did sign the income tax returns for this

A20

BEST COPY AVAILABLE

> corporation. I have no knowledge was [sic] has happened to the Corporate assets. I do not have the information or records to complete the financial statement for the Corporation (Form 433-AB).

On March 5, 1969, respondent's agents conferred with petitioner in connection with an inquiry into the tax liability of the 2377 Creston Corporation. According to a memorandum of the conference prepared by the agents on the date of the conference, petitioner claimed he did not understand his constitutional rights, as he was under the influence of drugs which he took regularly for his bad heart. In reply to most of the questions asked him, petitioner replied that he did not know or did not remember. According to the memorandum, he claimed merely to be an employee of the corporation, and he did not know who his employer was.

On subsequent occasions, petitioner refused to meet with respondent's agents in connection with an inquiry into his individual tax liability.

ULTIMATE FINDINGS OF FACT

Petitioner received income of $203,612.78 in 1965 and $24,151.25 in 1966 which he failed to report on his tax returns filed for those years.

Petitioner fraudulently omitted income on his 1965 and 1966 Federal income tax returns with an intent to evade tax.

OPINION

Petitioner is a medical doctor who, having failed to pay a large assessment for overdue taxes, filed a statement with the respondent in 1964 showing his net worth to be negative. He reported taxable income for 1965 and 1966 in the amounts of $610.00 and $3,092.15, respectively. On June 17, 1965, he opened a brokerage account with Merrill Lynch under the name of Wolf Geller. During 1965 and 1966, he purchased $203,612.78 and $24,151.25, respectively, worth of tax-exempt bearer bonds

through the account. Petitioner took delivery of the bonds, picking up most of them personally, and did not resell any of the bonds through the account.

Petitioner, his wife and his sister incorporated the 2377 Creston Corporation in 1950. The address of the corporation was, during 1950 and at all times relevant herein, in care of Geller at the office address of petitioner. Petitioner signed the corporation income tax returns for 1965 and 1966 as president. Petitioner's sons received compensation as officers of the corporation in 1965. The corporation returns for 1965 and 1966 showed reductions in cash on hand of $230,494.22 and $12,128.48, respectively. A reduction of $143,592.24 in "surplus reserves" in 1965 was not explained on the return. Petitioner withdrew $15,067.19 from the corporation's savings accounts in 1965, and deposited the amounts in his account with Merrill Lynch.

Respondent determined that the unexplained deposits in the brokerage account with Merrill Lynch were unreported income taxable to

petitioner. Respondent contends that a likely source of those funds was the 2377 Creston Corporation, distributions from which were taxable as dividends to petitioner. Respondent further contends that the failure to report such income was due to fraud with intent to evade tax, so that (1) deficiencies for the years in question are not barred by the statute of limitations, and (2) the 50 percent addition to tax may be assessed under section 6653(b).[3]

Respondent's determination that the unexplained deposits were income was not arbitrary.

---

[3] SEC. 6653. FAILURE TO PAY TAX.

* * *

(b) Fraud.--If any part of any underpayment (as defined in subsection (c)) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50 percent of the underpayment. In the case of income taxes and gift taxes, this amount shall be in lieu of any amount determined under subsection (a). In the case of a joint return under section 6013, this subsection shall not apply with respect to the tax of a spouse unless some part of the underpayment is due to the fraud of such spouse.

* * *

A24

Petitioner failed to cooperate with respondent's agents and did not present any explanation of his deposits. Initially, he denied having made them. In view of the absence of books and the inadequacy of petitioner's explanation of the deposits, respondent was fully justified in resorting to the bank deposits method of reconstructing income. John Harper, 54 T.C. 1121, 1129 (1970). "A petitioner cannot refuse to cooperate with the agent conducting a tax investigation and then claim that the resulting determination by the Commissioner was arbitrary when the agent acted reasonably, taking into consideration the information available to him." Estate of Mary Mason, 64 T.C. 651, 658 (1975). Inasmuch as respondent's determination is supported by the evidence and is neither arbitrary nor unreasonable, then a presumption of correctness attaches to the determination. Estate of Dorothy E. Beck, 56 T.C. 297, 340 (1971); John Harper, supra.

With respect to the issue of fraud, however, the burden of proof is on the respondent, and such proof must be clear and convincing. Section 7454(a); Kreps v. Commissioner, 351 F.2d 1 (2d Cir. 1965), affg. 42 T.C. 660 (1964); Rule 142, Tax Court Rules of Practice and Procedure. Whether fraud exists is a question of fact to be determined upon consideration of the entire record. M. Rea Gano, 19 B.T.A. 518 (1930). The mere understatement of income is not enough to establish fraud, because the intent of the taxpayer to evade taxes must be affirmatively established. Drieborg v. Commissioner, 225 F.2d 216, 218 (6th Cir. 1955). However, fraud need only be shown with respect to a part of the deficiency. Section 6653(b).

Petitioner makes a multitude of arguments. He contends that the assessment cannot be made because it is barred by the statute of limitations, or, alternatively, laches. He contends that he was not adequately notified of the basis for respondent's determination and thus was not afforded his right to due process of law under the Fifth Amendment to the

A26

Constitution. He claims that the respondent illegally opened his mail and withheld evidence helpful to his case, preventing him from obtaining a fair trial. He challenges the admissibility of Merrill Lynch's deposit sheets.

Petitioner relies on the statute of limitations to bar the assessment of tax. However, respondent contends that petitioner filed false and fraudulent returns and willfully attempted to evade tax for the years in question so that section 6501(c)(1)[4] applies to keep open the period of assessment.

---

[4] SEC. 6501. LIMITATIONS ON ASSESSMENT AND COLLECTION.

(a) General Rule.--Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) * * * and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

* * *

(c) Exceptions.--

continued

The resolution of this issue thus depends upon whether the petitioner filed a fraudulent return with intent to evade tax, which the respondent has the burden of proving by clear and convincing evidence. Section 7454(a); Rule 142, Tax Court Rules of Practice and Procedure.

Nor may petitioner avail himself of the doctrine of laches in the event that the statute of limitations does not bar the assessment. Laches is no defense against the United States. United States v. Summerlin, 310 U.S. 414, 416 (1940). Respondent cannot be barred from prosecuting a tax claim because

---

Footnote 4--continued

> (1) False return.--In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.
>
> (2) Willful attempt to evade tax.--In case of a willful attempt in any manner to defeat or evade tax imposed by this title (other than tax imposed by subtitle A or B), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.
>
> * * *

A28

of laches. Olshausen v.Commissioner, 273 F.2d 23, 28 (9th Cir. 1959).

Petitioner contends that his Fifth Amendment rights were violated, inasmuch as he was not given notice of the basis for the deficiencies in his tax until immediately prior to the trial. He relies primarily on the fact that he was not put on notice that the disappearance of funds from the 2377 Creston Corporation was to be used by respondent as a plausible source of funds for his deposits in the brokerage account. This argument ignores the fact that the basis for the assessment was petitioner's making large unexplained deposits to a brokerage account which he had opened. Petitioner was adequately apprised of this fact by the notice of deficiency, which stated in part:

> It is determined that you realized unreported taxable income in the amount of $203,612.78 for the taxable year 1965 and $24,151.25 for the taxable year 1966 representing unexplained deposits in the brokerage account of Wolf Geller with Merrill, Lynch, Pierce, Fenner & Smith, Inc. of (sic) which were not verified or explained.

The notice of deficiency clearly indicates the amounts and dates of the purported income and the reason for arriving at those amounts.[5] Respondent's subsequent declaration of a potential source of the funds deposited does not alter the fact that petitioner was informed of the basis for the determination, namely the unexplained deposits, far in advance of the time of trial. He had ample opportunity to show that the funds could have been derived from a nontaxable source.

Petitioner contends that the respondent illegally intercepted and opened his mail and that as a result the case should be dismissed or evidence excluded as "fruit of the poisoned tree." At trial, however, petitioner was unable to point to any evidence which was obtained through illegal acts. Nor was he able to find any

---

[5] The notice was timely and was sent to petitioner's last known address. The requirements of section 6212 were thus satisfied.

connection between the illegal acts and the evidence relied on by respondent. There is thus no evidence upon which the exclusionary rule may operate. Petitioner's remedy for this alleged violation of his civil rights is not in this Court.

Petitioner claims that the respondent withheld evidence helpful to his case. He points to alleged interviews that respondent's agents had with his brother Morris in which Morris "told the entire truth." Morris is now deceased, and petitioner claims he is prejudiced by not having a record of Morris' statements made available to him. Respondent's agent testified that Morris was "not responsive" and that no evidence was obtained from him. When summoned by the respondent, Morris did not appear on the appointed date. In a letter to respondent, he denied knowledge of security transactions made with or for the petitioner. This evasive response lends credence to the agent's characterization of Morris. We choose to believe respondent's agent.

On brief petitioner objects to the admission of the Merrill Lynch records. Since they were transcribed by humans, he says, they could have been in error. Further the name listed on the deposit sheets is "W. Geller," of which there are several in New York. Petitioner contends that this does not prove that the deposits were to his account.

Petitioner's argument overlooks the fact that the deposit sheets also carry the account number, which is unique to petitioner. With respect to admissibility, it is clear that business records may be admitted into evidence as an exception to the hearsay rule, provided they are kept in the regular course of business as indicated by the testimony of a person

charged with their custody.[6] As to the weight to be accorded the documents, we regard the deposit sheet compilation of petitioner's deposits to be accurate, inasmuch as the figures thereon comport with the other evidence admitted in this case.

---

[6] Rule 803 of the Federal Rules of Evidence provides as follows:

> Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial
>
> The following are not excluded by the hearsay rule, even though the declarant is available as a witness:
>
> * * *
>
> (6) Records of regularly conducted activity.--A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.
>
> * * *

The only affirmative explanation petitioner offers of his activities is that he acted solely as the agent of his mentally retarded brother Morris, whom he felt an obligation to help. Morris, in turn, was supposedly the dupe of a "Mr. Klein." Morris is now deceased, and petitioner did not produce Mr. Klein at trial.

Petitioner's testimony and his allegations at trial and on brief are replete with self-contradictions and are unworthy of belief. On repeated occasions, petitioner maintained a position until confronted with contrary evidence, at which time he took a new position inconsistent with the old. The disparities in petitioner's allegations may be illustrated by his contentions regarding the brokerage account with Merrill Lynch.

In his petition to this Court, petitioner stated that respondent erred in determining the deficiencies in the following respect: "I, William Geller, am not Wolf Geller." By making such a statement, petitioner intended to deny that he had made deposits to the brokerage account in the name of Wolf Geller, as alleged in the notice of deficiency.

A 34

Confronted with cancelled checks which bore the endorsements of petitioner, "Wolf Geller" and Merrill Lynch, petitioner admitted at trial that he had opened the brokerage account with Merrill Lynch, in the name of Wolf Geller. He claimed that Wolf Geller was not a fictitious name, but rather his Hebrew name.[7] He also stated that the account was not for his benefit, but for that of his brother Morris. As evidence of this assertion, he pointed to the address given for the account, which was the business address of his brother Morris. In explanation of the statement in the petition, petitioner maintained that the petition was in fact drafted and written by his wife Doris, who was not familiar with the fact that Wolf Geller was his Hebrew name.

Petitioner's explanation is not worthy of belief. Petitioner, not his wife, was the

---

[7] In a sworn affidavit, petitioner's brother, Solomon Geller, stated that petitioner's Jewish name was Welvel. He had never known petitioner to use the name "Wolf."

active member in the family's legal and financial dealings. The petition bears his signature. Further, there was no reason for the reference to "Wolf Geller" other than response to the allegation in the notice of deficiency. It is also hard to believe that petitioner's wife would not be familiar with his Hebrew name, if Wolf Geller were in fact his Hebrew name.

Petitioner contends that he never personally picked up the bearer bond certificates purchased through his brokerage account. He maintained at trial that the certificates were sent through the mail to the address listed for the account, which was that of his brother Morris.

We have found as a fact that petitioner personally took delivery of the bearer bonds purchased through his brokerage account. His account executive at Merrill Lynch at the time, Marvin Brown, testified that the petitioner personally opened the account. Thereafter, petitioner telephoned Mr. Brown with instructions to purchase

bonds. Deposits were made to cover the purchase. When the bond certificates were ready, petitioner, who was accompanied by a young man, went to the Merrill Lynch office and met Mr. Brown who led him to the cashier.[8] Mr. Brown testified that this took place on six or seven occasions and that he did not recall the certificate being mailed on any occasion.

Petitioner contended at trial that Mr. Brown did not remain at the cashier's window to witness the entire transaction, while Mr. Brown maintained that he saw the certificates being delivered to petitioner. Regardless of whether petitioner was correct in his contention that Mr. Brown did not actually see the delivery of the bonds, it is clear from Merrill Lynch's records for petitioner's account that the certificates

---

[8] Petitioner also contended at one time that it was his brother Morris who telephoned Mr. Brown and who arrived at the Merrill Lynch office to pick up the bond certificates. He explained his identification by Mr. Brown, the account executive, by saying that he and Morris looked very much alike and that Mr. Brown may have mistaken Morris for petitioner.

were in fact delivered. The evidence, albeit circumstantial, is overwhelming that petitioner took personal delivery of the bonds. Circumstantial evidence may be relied upon to prove fraud. Robert P. Lord, 60 T.C. 199, 208 (1973), revd. in part and affd. in part 525 F.2d 741 (9th Cir. 1975); Nathaniel M. Stone, 56 T.C. 213, 224 (1971); Tsuneo Otsuki, 53 T.C. 96 (1969).

In his reply brief, petitioner changed his story once again, apparently claiming that the young man who accompanied him when he called for the bonds at the Merrill Lynch office was his brother Morris. Petitioner indicated that the bonds were delivered to Morris and that he merely accompanied Morris because the latter was sick. He stated in the brief, "I was afraid that he may die on the road or in the subway with the bonds. That is the reason I went with him."

Once again petitioner is belatedly attempting to conform his story to the facts. However, the young man who accompanied petitioner at the brokerage office was described by Mr. Brown as probably being in his teens. While Morris

is apparently younger than petitioner, petitioner's own statement indicates that Morris was in his middle 30's at the time. It is doubtful that Morris was in fact the young man who accompanied petitioner, but regardless of whether this was the case, it is clear from the testimony of Mr. Brown that petitioner, not the young man, controlled the transactions.

Petitioner pleads ignorance with regard to the affairs of the 2377 Creston Corporation. In a sworn affidavit given February 15, 1968, he stated that he had no knowledge of what happened to the assets of the corporation. Confronted with the cancelled checks representing withdrawals from savings accounts of the corporation, petitioner claimed that he received a salary from the corporation which he had reported as income. He also stated that he did not have any knowledge of who controlled the corporation, since he only served as an employee of the corporation.

Petitioner's testimony must be rejected as false. Petitioner was an original incorporator and shareholder of the corporation, along with

other members of his family. During the years in question, petitioner signed the income tax returns of the corporation as president. The returns were sent to his address. They were prepared by an accountant at his direction. During 1965 his two young sons were salaried officers, yet petitioner was unable to name any services which they performed for the corporation. Petitioner had the right to withdraw money from the corporation's savings accounts on his signature alone. The only other person with such a power was his wife. Furthermore, he did not report any income from his alleged "salary." The evidence is abundant that petitioner was intimately involved with the corporation during the years in question and that he, in fact, controlled the corporation.

Aside from the fact that petitioner's testimony was unworthy of belief, the record contains numerous instances of affirmative evidence that petitioner's activities were conducted with fraudulent intent. Petitioner attempted to conceal his deposits to the brokerage account.

See Spies v. United States, 317 U.S. 492, 499 (1943). He opened the account in a name other than the one which he normally used. See Estate of Dorothy E. Beck, supra, at 366. He made deposits to this account from sources which he was unable or unwilling to identify, having kept no records of the transactions. See Tsuneo Otsuki, supra, at 109. Through the account, he purchased tax-exempt bonds in bearer form, which were readily transferrable and on which no interest payments were required to be reported for tax purposes.

Petitioner's activities had other indicia of fraud. He failed to cooperate with revenue agents sent to investigate his tax liability and that of the corporation. See Estate of Dorothy E. Beck, supra, at 365. He made statements inconsistent with the facts and with his own previous statements. See Lillian Pascarelli, 55 T.C. 1082, 1093 (1971); Lillian Kilpatrick, 22 T.C. 446, 456 (1954).

Nor can petitioner be said to be ignorant of the internal revenue laws. His past dealings with respondent have been extensive. See Estate of Dorothy E. Beck, supra, at 368. In view of the foregoing, the conclusion is inescapable that petitioner fraudulently understated his income with the intention of evading taxes. Accordingly, the statute of limitations does not bar the assessment, and the petitioner is liable for the addition to tax under section 6653(b).

Decision will be entered for the respondent.

UNITED STATES TAX COURT
WASHINGTON

WILLIAM GELLER and DORIS GELLER, Petitioner	)	
v.	)	Docket No. 4046-73
COMMISSIONER OF INTERNAL REVENUE, Respondent	)	

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion filed August 18,1976, it is

ORDERED and DECIDED: That there are deficiencies in income taxes due from petitioners William Geller and Doris Geller for the following taxable years in the following respective amounts:

Year	Deficiency
1965	$111,123.57
1966	5,598.89

That there are additions to the tax, pursuant to section 6653(b) of the Internal Revenue Code of 1954, due from petitioner William Geller for the following taxable years in the following respective amounts:

Year	Additions to Tax Section 6653(b)
1965	$55,561.79
1966	2,799.45

That there are no additions to the tax, pursuant to section 6653(b) of the Internal Revenue Code of 1954, due from petitioner Doris Geller for the taxable years 1965 and 1966.

/s/
William H. Quealy
Judge

Entered: August 18 1976

A43

PROCEEDINGS

THE CLERK: Rise, please. The Court is now in session. Be seated, please. 4046-73, William Geller and Doris Geller.

MR. COOK: Gordon Cook for the respondent, Your Honor.

MR. KARS: Larry Kars for respondent.

THE CLERK: State your appearance, please, Mr. Geller.

MR. COOK: Dr. Geller, would you state your name for the record, please.

DR. GELLER: The name is William Geller. And the address, also?

MR. COOK: Yes, sir.

DR. GELLER: 2280 Rochambeau Avenue, the Bronx.

THE COURT: Now, Dr. Geller, you'd better sit up here so that you can hear a little better. Now, Dr. Geller, on June 4, 1973, in your handwriting, presumably, you filed a petition with the Court and you started out by saying, "I, William Geller, am not Wolf Geller." Is that right?

DR. GELLER: I did file that petition.

THE COURT: All right. There is --

DR. GELLER: It was not written by me.

THE COURT: Yes. It's the Court's understanding

now that you admit a certain account with Merrill Lynch in the name of Wolf Geller was your account; is that right?

DR. GELLER: Well, I think the --

THE COURT: That you are the Wolf Geller that that account was -- whose name that account was carried; is that right?

DR. GELLER: Yes.

THE COURT: Okay. Now, let me see your Merrill Lynch material there, Counsel. Mark that for identification. Just make that our first joint exhibit. Joint exhibit.

THE CLERK: Joint Exhibit 1-A, 2-B, 3-C.

THE COURT: 1-A, 2-B and 3-C. That's the Merrill Lynch account. Right. For identification. Now, Dr. Geller, will you take a look at this and -- the name and address and the like and tell us whether or not this is the account that you had with Merrill Lynch in your name, Wolf Geller.

MR. COOK: Excuse me, Your Honor. Is this for stipulation purposes? Dr. Geller --

THE COURT: No, we're not --

MR. COOK: Dr. Geller hasn't been sworn in, I don't believe.

THE COURT: No. I know. I know; that's right.

DR. GELLER: Your Honor, I have never seen these

statements before. They had been mailed to my brother at his office at 318 East 149th Street, the Bronx. I have never seen them. I was just a messenger, I was trying to help my brother out.

THE COURT: But you're the Wolf Geller whose name --

DR. GELLER: I am the Wolf Geller --

THE COURT: All right. Whose --

DR. GELLER: -- correct.

THE COURT: -- name appears on that account.

DR. GELLER: Yeah. I had never seen these things; as a matter of fact, I -- I don't even recognize the purchases here. Of course, it's twelve years ago, I may not remember.

THE COURT: But this is --

DR. GELLER: He or somebody else called for --

THE COURT: This is an account --

DR. GELLER: -- for my brother.

THE COURT: -- that was carried in your name.

DR. GELLER: I never had an office in the house on 149th Street; I never lived there.

THE COURT: Now -- all right. Subject to the witness -- to the qualifications of the petitioner, this will be received as Exhibits 1-A, 2-B, 3-C. Now, does the respondent have the checks that were deposited in this

account that you'd like to offer to --

MR. COOK: Yes, Your Honor.

THE COURT: -- petitioner to see as an exhibit? Are those all of them, Counsel?

MR. COOK: These are all that we can trace directly to Merrill Lynch.

THE CLERK: Respondent's Exhibits D, E, F and G are marked for identification.

THE COURT: All right, D, E, F and G. Exhibit D, Dr. Geller, a check, Westside Federal Savings, No. 312934; is that your name and your endorsement?

DR. GELLER: It is.

THE COURT: All right. That will be received as an exhibit. The next check, Queens County Federal Savings, Check 026643, that's Exhibit E.

DR. GELLER: One moment.

THE COURT: Is that your name and your endorsement?

DR. GELLER: It is.

THE COURT: All right. That will be received. Knickerbocker Federal Savings, Check No. 827213; is that your name and your endorsement?

DR. GELLER: It is.

THE COURT: Check No. 827295, Knickerbocker Federal Savings, Exhibit G; is that your check and your endorsement?

DR. GELLER: It is.

THE COURT: All right. Checks No. -- Exhibits No. D, E, F and G will be received. Now, do you have a record from Merrill Lynch showing the source of the deposits to this account?

MR. COOK: Yes, Your Honor.

THE CLERK: H -- Respondent's Exhibit H and I are marked for identification.

THE COURT: Respondent's Exhibits H and I. This is a -- Dr. Geller, this is a letter from Merrill Lynch, together with a copy of their records which show a credit to the account which we are talking about of either checks or currency during the period involved. Would you take a look at that and have any questions as to whether or not that's a true and correct copy of Merrill Lynch's records?

DR. GELLER: And may I know who these names are?

THE COURT: Well, you only need to worry about your name being on there; these other names are other accounts.

DR. GELLER: Well, I --

THE COURT: Every now and then you'll see a name of your account --

DR. GELLER: I see. Uh-huh.

THE COURT: -- see? And that shows where the deposits to this account came from.

DR. GELLER: As I told you before, and I state it again, I did have one account with Merrill Lynch. You are showing me here -- here several pages which I've never seen before. I see my name is mentioned once -- no, two times -- three times. Well, I have admitted and I do admit that I did business with -- with --

THE COURT: All right.

DR. GELLER: -- a brokerage house of Merrill Lynch.

THE COURT: That, the Exhibit H and I, will be received --

DR. GELLER: Beg your pardon?

THE COURT: -- subject to your right if you so desire to check with Merrill Lynch and make sure that those are true and correct copies of their original records. If you're not satisfied that they are, why, you can -- you can check and so advise the Court. Now, let me see a copy of those returns of that corporation we're talking about here.

THE CLERK: Respondent's Exhibit J, K, L, M, and N are marked for identification.

DR. GELLER: May I -- may I ask what are these records that you showed me? What are they supposed to show?

THE COURT: This is just Merill Lynch's day book showing what they, the book -- the Accounting Department received each day and on the days when you made a deposit

or -- to that account, your name appears with the amount of the deposit.

DR. GELLER: Now, don't the check prove that?

THE COURT: Pardon?

DR. GELLER: Don't -- does not the check --

THE COURT: Well, the checks are some of it. This shows what the total is; the checks are just samples of -- of what we're talking about here. For example, on --

DR. GELLER: Now, you want me to testify that --

THE COURT: -- on July 7th, 1965, shows a deposit of $6,000.00 to Account 52912, William Geller, represented by seven checks. See? That's what this record shows.

DR. GELLER: I believe this is grossly unfair. I -- I -- if you show me these checks, I will identify them.

THE COURT: Well --

DR. GELLER: But I don't know, maybe they had another Geller account.

THE COURT: In other words, it's your position that this may not have been your account?

DR. GELLER: Or there could be another William Geller. There's --

THE COURT: Well --

DR. GELLER: -- many Gellers in the telephone book.

THE COURT: -- the problem --

DR. GELLER: William Gellers.

THE COURT: The problem with that, Dr. Geller, is that the account also has a number --

DR. GELLER: Yes.

THE COURT: -- which is the same number --

DR. GELLER: But what is to say it was -- it was done by human being --

THE COURT: -- which is the same --

DR. GELLER: -- he may be wrong.

THE COURT: -- same number as the account that you carried in your name.

DR. GELLER: Or it -- you could be wrong. I can only identify the checks -- I can only identify --

THE COURT: All right. Let's just agree --

DR. GELLER: -- the checks which are shown to me.

THE COURT: -- that this is a copy of Merrill Lynch's records, whether they're right --

DR. GELLER: I beg your pardon?

THE COURT: These are Merrill Lynch's records whether they're right or wrong.

DR. GELLER: All right.

THE COURT: Okay.

DR. GELLER: But that is not my records.

THE COURT: All right. Very good. Now, we have here --

DR. GELLER: If you take a look in the telephone book, there are quite a number of Dr. Gellers, Dr. William Gellers. And I don't know, he may have had some of the -- something -- there's a lot of Dr. Gellers there.

THE COURT: All right.

DR. GELLER: If you show me the check with my name in it, okay.

THE COURT: All right.

DR. GELLER: And so far it adds up to fifteen thousand dollars.

THE COURT: Now, here is Exhibit J, is that your Income Tax Return for the year 1965?

DR. GELLER: This record bears my signature.

THE COURT: All right. Do you have any other --

DR. GELLER: And it is -- was prepared by a -- by Marvin Greenland -- Greenland who was not my accountant.

THE COURT: But this is your return that you filed for the --

DR. GELLER: Yeah, I signed it. Yes.

THE COURT: All right. All right. Exhibit J will be received. Exhibit K; is that your return that you filed for the year 1966?

DR. GELLER: Yes, I identify that this is my signature.

THE COURT: All right. Exhibit K will be

received. And Exhibit L is the return of 2377 Creston Corp., signed by Irwin Geller, President. Or, signed by Irwin Geller, President, but then there's a power of attorney inside -- within the return appointing Mason Greenland as attorney in fact, signed by you, William Geller, President, in '66. Who was Irwin Geller?

DR. GELLER: Irwin Geller was my -- is my son who helped me.

THE COURT: I see. Well, was he President of this corporation in 1964?

DR. GELLER: No, there was no President. There was no -- it was actually -- it was not the United States Steel or any of them places, it was that I was frankly helping my brother, that's all.

THE COURT: Well, is Irwin your brother or your son?

DR. GELLER: Not my brother, it's my son. Irwin is my son.

THE COURT: Irwin was your son. How old was he in 1964?

DR. GELLER: I beg your pardon?

THE COURT: How old was he in 1964?

DR. GELLER: Wait, let me figure out. If he's thirty years old now, how old was he in 1966 (sic)? That's what you want?

THE COURT: '64.

DR. GELLER: 1965 (sic).

THE COURT: Nineteen sixty --

DR. GELLER: In 1976 he's thirty years old.

THE COURT: Well, that would make him eighteen years old, wouldn't it?

DR. GELLER: Beg --

THE COURT: He'd be eighteen years old, then, wouldn't he?

DR. GELLER: Apparently.

THE COURT: Yeah. Was he President of this company in nineteen sixty --

DR. GELLER: No. I was sick so he signed it.

THE COURT: So he signed it for you?

DR. GELLER: That's right.

THE COURT: You were President?

DR. GELLER: Yeah, President.

THE COURT: All right. Is this the return, Exhibit L?

DR. GELLER: This is the return, yes.

THE COURT: All right. Exhibit L will be received. The next is Exhibit M, a return of 2377 Creston Corp., 1965, signed by William Geller as President. Is that a copy of that return?

DR. GELLER: That is correct. That's my

signature.

THE COURT: Exhibit M will be received. Exhibit N, the return of 2377 Creston Corp., for 1966, signed by William Geller, President.

DR. GELLER: Yes. This is my --

THE COURT: That's your signature?

DR. GELLER: My signature.

THE COURT: Yeah. Now, is it your contention that you had no interest in this corporation?

DR. GELLER: This is my contention.

THE COURT: I see.

DR. GELLER: And it can be proven that they -- that they -- they haven't taken any measures to -- they just wanted to --

THE COURT: Well, let me ask you, if you had no interest in this corporation, how was it that you could arrange for your eighteen-year-old son to sign a return as President?

DR. GELLER: I wanted to help a sick brother out.

THE COURT: And --

DR. GELLER: And I was sick myself.

THE COURT: -- you signed as President? Hmm?

DR. GELLER: I beg your pardon?

THE COURT: How did you become President if you -- if you had no interest in it?

A55

DR. GELLER: Actually, I was not President. I mean, it's just --

THE COURT: Well, who was --

DR. GELLER: -- the President -- no President, it was just --

THE COURT: Well, who was President?

DR. GELLER: -- to sign -- the accountant told me to sign so I signed.

THE COURT: Who was President?

DR. GELLER: What exactly do you mean by "President"?

THE COURT: I say, who -- who was President? Did the corporation have a President?

DR. GELLER: It didn't have a President.

THE COURT: I see.

DR. GELLER: It didn't have any election.

THE COURT: Did it have any stockholders?

DR. GELLER: I -- I guess it was just the way -- I guess so.

THE COURT: Well, who were --

DR. GELLER: I'm not sure.

THE COURT: -- the stockholders?

DR. GELLER: Since my brother was employed by them, I did not come -- the only thing, I met once in the office was a Mr. "Klein".

THE COURT: Well, you were President, weren't you? You must --

DR. GELLER: Well, I --

THE COURT: -- have had something to do with it. Why -- why would you be signing the return --

DR. GELLER: Well, I don't understand --

THE COURT: -- when you didn't have anything to do with it?

DR. GELLER: -- it's an error.

THE COURT: Hmm?

DR. GELLER: It's an error on my part.

THE COURT: For three years it's an error, hmm?

DR. GELLER: I beg your pardon?

THE COURT: It was an error for three years to sign --

DR. GELLER: That's right.

THE COURT: -- this return, because you had nothing to do with the corporation, is that right?

DR. GELLER: That's right. It's an error.

THE COURT: Well, if you had nothing to do with the corporation, why was the corporation giving you checks? Why was this money coming from the corporation?

DR. GELLER: They did not give the checks to me. They actually gave the checks to my brother and --

THE COURT: Well, the checks --

DR. GELLER: -- and I handled it for him.

THE COURT: -- were issued in your name, weren't they? These --

DR. GELLER: And I handled it for the -- for them.

THE COURT: These checks that came out of the savings and loan accounts of this corporation were issued in your name, weren't they?

DR. GELLER: Yeah, because I made the deposit in my name.

THE COURT: The deposit where, over to the Merrill Lynch account?

DR. GELLER: To these banks.

THE COURT: Right.

DR. GELLER: You see, I had a sick, mentally retarded brother and I had to help him out. It is -- it's -- I did the wrong thing and I didn't know that it was wrong.

THE COURT: Well, what happened to all this money?

DR. GELLER: You have shown me that -- you have shown me checks totaling fifteen thousand dollars.

THE COURT: Well, I don't need to go to --

DR. GELLER: And I remember --

THE COURT: Well, let me point out to you, Dr. Geller, that the return of the corporation itself shows that

some two hundred and plus thousand dollars went somewhere during this period.

DR. GELLER: Well, where did it go?

THE COURT: Well, that's what I'm asking you.

DR. GELLER: Well, I -- am I responsible?

THE COURT: You were the President; you signed the checks; you got the checks; the Government says you got it in the form of income as a dividend or -- from the corporation. You say you didn't. If you didn't, who did get it? Because you were in control.

DR. GELLER: As I pointed out to you, this -- you know, while I went through the motions of depositing and withdrawing and doing business for them, I didn't benefit to any -- to any extent here.

THE COURT: I see.

DR. GELLER: I only did this for my brother.

THE COURT: Well, now, maybe we've gotten to the point --

DR. GELLER: Well, does it make any sense that I would be living in a -- in a five-room apartment with four children and having an office there, hardly making a living --

THE COURT: Well, the --

DR. GELLER: -- if I got all this money? Because making -- it would got to be recorded.

THE COURT: Now, let's get one more document in by agreement if we can and then we'll let the petitioner be sworn, counsel. Do you have -- you want -- you have that -- that statement he made in connection with the compromise? Are you going to offer that in?

MR. COOK: Yes, Your Honor.

THE CLERK: Respondent's Exhibit O is marked for identification.

MR. COOK: Your Honor, were you speaking of the affidavit or the financial statements submitted with regard to the offer in compromise?

THE COURT: Well, this has nothing to do with the offer in compromise, does it?

MR. COOK: I'm sorry; I misunderstood. I thought you --

THE COURT: So we'll take that one off.

DR. GELLER: And the -- and the respondent claims that -- that I refused an audit. An audit was never asked for.

THE COURT: Uh-huh.

DR. GELLER: They kept on cross-examining my brother and he told them as far as I know what this -- what he told me and when he died they -- when the Statute of Limitations expired already, they're pouncing upon me.

THE CLERK: Respondent's Exhibit P and Q are

marked for --

THE COURT: Make that O. Now, I think that maybe --

THE CLERK: Respondent's Exhibit O and P are marked for identification.

THE COURT: Respondent Exhibit O is a statement of financial condition and other information which reportedly was filed by you, Mr. Geller -- Dr. Geller; and P is a similar statement. Would you read those statements and see whether or not you wish to stipulate --

DR. GELLER: What is your question?

THE COURT: Would you take a look at those statements, and whether you agree with the -- that the statements were filed by you and if the facts as stated therein are correct?

DR. GELLER: I don't see my signature there at all. Now, one -- on one sheet which is dated July the 15th, 1963, I have signed this paper and I recognize my signature.

THE COURT: All right.

DR. GELLER: On one page.

THE COURT: All right. That will be received as Exhibit O. Exhibit P?

DR. GELLER: Yeah, I -- on one sheet which is dated September the 21st, 1964, I do recognize my

A61

signature.

THE COURT: All right. That will be received as Exhibit P. Now, Dr. Geller -- well, first, anything else that the respondent wants to offer this witness for purposes of stipulation here?

MR. COOK: For purposes of stipulation, Your Honor --

DR. GELLER: It appears to me that --

MR. COOK: Yes, Your Honor.

DR. GELLER: -- they have maneuvered this case when I have no records and no witnesses, to -- to wait twelve years, and no audit was asked for, despite of the fact I asked for several times to explain to me over what -- what this deficiency is for, and so far I've seen checks which I recognize which I endorsed --

THE COURT: Well, I --

DR. GELLER: -- for fifteen thousand dollars.

THE COURT: We'll explain what it's -- what it's for if you're still -- still in doubt.

MR. COOK: For purposes of stipulation, no, Your Honor, we don't.

THE COURT: All right. Now, Dr. Geller, based on the record that we have here, during the year 1965 and 1966, tax returns were filed on behalf of the 2377 Creston Street Corporation; you signed those returns as President.

A62

A large sum of money was withdrawn from the corporation in that period of time. Some of that money was in the form of checks payable in your name, were taken by you to Merrill Lynch and deposited in a brokerage account which was in your name, used for the purchase in part, at least, of New York City Housing Bonds, I believe; Merrill Lynch delivered the bonds to somebody --

DR. GELLER: To somebody; correct.

THE COURT: -- in your name, because they won't deliver them out of an --

DR. GELLER: I don't see any receipts.

THE COURT: -- account in somebody else's name --

DR. GELLER: I don't see any receipts.

THE COURT: I'm -- all I'm saying, Dr. Geller, is that I think you'll find that -- that the delivery has to be -- the bond has to be issued in the name of the account, it can be issued in the name of Joe Blow; something happened to that money. Right? Now, that's the point we are now. Since -- since you were the last one of record that handled it, the Government has charged you with having received it as income. Now, that's -- that's the whole case.

DR. GELLER: I beg to differ with you, Your Honor.

THE COURT: Now --

DR. GELLER: If he's --

THE COURT: Now, we'll put you --

DR. GELLER: If he's seeking the truth, then I'll go to work and we --

THE COURT: We'll put you under oath and you can --

DR. GELLER: They were not delivered to me, I never saw them.

THE COURT: -- and you can testify as to what happened to them. All right. Let's put the witness under oath.

DR. GELLER: And may I respectfully ask you to -- the Court to consider the violation of my -- of my rights as far as fraud is concerned, as far as --

THE COURT: Well, now, let's -- let's -- first, before we swear you in, then, as your own advocate --

DR. GELLER: Repeat again, please?

THE COURT: I say, as your own lawyer here before we swear you in, is it your position that -- that this -- that your Constitutional rights have been violated in --

DR. GELLER: Correct. On three occasions.

THE COURT: -- the bringing of this case?

DR. GELLER: On three occasions.

THE COURT: Now, in what respect were your rights violated?

DR. GELLER: Yeah. The Statute of Limitation.

THE COURT: All right.

DR. GELLER: No proof of fraud has been proven.

THE COURT: All right. The Government is proving -- the Government is proving the fraud right now. They -- if there's no fraud in this case, the assessment doesn't stand up, so you plead the Statute of Limitations; that's a matter for a decision. What else do you object to?

DR. GELLER: And no due process of law must follow --

THE COURT: All right. The Court over --

DR. GELLER: -- a violation of my rights according to the Fifth Amendment.

THE COURT: The Court overrules that. So, what's the next?

DR. GELLER: My mail was opened by the Internal Revenue.

THE COURT: Is there anything on this table here that was -- that was obtained from your mail being opened?

DR. GELLER: Yes.

THE COURT: What?

DR. GELLER: Yes.

THE COURT: What came out of your mail that's on this counsel table?

DR. GELLER: I beg your pardon?

THE COURT: What came out of your mail that's on this counsel table? None of these documents came -- came

out --

DR. GELLER: Yeah, I know, just --

THE COURT: -- of your mail, did they?

DR. GELLER: I just showed it to you.

THE COURT: Well, let me put it this way, Dr. Geller: The Government has not offered in this case any evidence that they obtained as a result of opening your mail, have they?

DR. GELLER: I do not know where they obtained --

THE COURT: Well, was this in your mail? No; you mailed that in. This you sent in, right? This the corporation sent in. The Merrill Lynch records came from Merrill Lynch. The checks came from the savings and loan so that there's nothing here that -- that was taken out of your mail, isn't that right? Well, the Court so holds, so, go ahead. I overrule that. What's your next objection?

DR. GELLER: What is the question?

THE COURT: What's your next objection?

DR. GELLER: My objection is that the -- that the due process of law was not followed.

THE COURT: All right. That's overruled.

DR. GELLER: That this is in violation of the law.

THE COURT: That's --

DR. GELLER: I was not notified of any deficiency

until twelve years later --

THE COURT: That --

DR. GELLER: -- I'll say 1973.

THE COURT: That's --

DR. GELLER: At that time the Statute of Limitation was out.

THE COURT: All right. That objection is overruled other than the fact that you've pleaded the statute and the Government will have to overcome --

DR. GELLER: You're going to --

THE COURT: -- the statute.

DR. GELLER: -- overrule everything I have to say if it's --

THE COURT: All right. Now, if you want to be sworn in and testify, you can testify. Do you want to testify as to these matters?

DR. GELLER: On what matters?

THE COURT: As to these matters here?

DR. GELLER: I have recognized whatever you showed me.

THE COURT: All right. Let's -- let's swear him in.

THE CLERK: Raise your hand, please. You do solemnly swear that the testimony you're about to give the Court in this case shall be the truth, the whole truth, and

nothing but the truth, so help you God?

THE WITNESS: Yes, sir. Yes, sir.

THE COURT: All right.

WILLIAM GELLER,

called as a witness, having been duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

PRO SE:

THE COURT: Let's assume, Dr. -- Dr. Geller that some two hundred thousand dollars disappeared from the corporation, 2377 Creston Corporation, and that at least some of that passed through your hands; right? And went to your account or an account in your name at Merrill Lynch and were used to purchase bonds, and that those bonds were delivered to somebody. All right. You are hereby afforded the opportunity to explain to the Court how, why or who got those bonds or why -- and why you didn't get them and why you had no interest in these proceedings and why you had no interest in this corporation and why none of this income should be taxable to you. So, you may proceed.

THE WITNESS: Examining the records of Merrill Lynch, I note that these bonds were delivered to Morris Geller, 318 East 149th Street, New York City. Statements shown to me contain many names which I never heard of before. There are three or four names which are W. Geller

and Wolf W. Geller. They were -- they were written by somebody in Merrill Lynch's office; they do not bear my signature, and I -- and I don't know if they're correct. As a matter of fact, I question it. This Court has shown me checks, four checks that total fifteen thousand dollars, give or take a dollar or so; these I recognize.

I have no -- I never had any connection with this corporation; I was just trying to help out my brother who was a sick man, mentally retarded and a heart condition. The Internal Revenue, the Special Agent, had several conversations with him and he gave them all the information.

THE COURT: Now, do you want to call that agent and put him on the stand?

THE WITNESS: I -- I should call him?

THE COURT: Yeah, if you want to.

THE WITNESS: I don't know his name; I never --

THE COURT: Well, then, have the respondent produce him.

MR. COOK: Your Honor, his name is Robert Schulman. I believe he is in the --

THE COURT: Yeah. If you want to call him and ask him about what he said to your brother or vice versa, that's your privilege. He's here in the Courtroom.

THE WITNESS: Are you telling me that?

THE COURT: I'm saying that if you want to call

him and find out what your brother told him, why, we can call him.

THE WITNESS: Well, I don't know his name. I don't know if he's still alive.

THE COURT: Well, he's here. We'll give you his name.

MR. COOK: Robert Schulman.

THE COURT: Robert Schulman.

MR. COOK: Special Agent Robert Schulman.

THE COURT: Right.

THE WITNESS: And I should call him? He wouldn't --

THE COURT: Well, if you want to, that's your privilege.

THE WITNESS: I thank you very much for the privilege but he's a Government employee --

THE COURT: All right.

THE WITNESS: -- and so far the Government has not produced him as a witness.

THE COURT: They're here -- they have him --

THE WITNESS: They have produced only --

THE COURT: -- they have --

THE WITNESS: -- evidence which is in their favor.

THE COURT: All right. What else do you have to

say --

THE WITNESS: I do not know --

THE COURT: -- Mr. (sic) Geller? Well, you're speaking --

THE WITNESS: you know, about --

THE COURT: You were speaking about this --

THE WITNESS: -- if there's a record apparently --

THE REPORTER: Your Honor, I can't understand him. He's all --

THE COURT: Yeah.

THE WITNESS: -- that -- that this Internal Revenue Agent, Special Agent did have conversation; they have a record of it.

THE COURT: Now, Mr. Geller, you talked about these fifteen thousand dollars in checks. Is it the Court's understanding that you admit receiving this fifteen thousand dollars?

THE COURT: Uh --

THE COURT: Do you admit receiving this --

THE WITNESS: I did receive it and I bought securities and the securities were mailed to my -- to my brother. I have never touched these securities; I never saw them.

THE COURT: That's your testimony? I say, that's your testimony?

THE WITNESS: That's my testimony.

THE COURT: Okay. Is there anything else you want to say?

THE WITNESS: I want to point out to you, Your Honor, that my rights under the Fifth Amendment of the United States Constitution were violated and this is a very important factor. We have a Constitution in the United States and we must abide by it. If I would violate the Constitution, you would hang me, but here comes along the Government and they violated the Fifth Amendment in three respects. I -- due process of law; one day before the trial on Monday I was told by the attorney for the Government what this case was all about. How could I produce any witnesses in one day? What I did in this one day, I went to a law office and I did manage to get some copies of similar cases, and in all of them, the Court has decided in favor of the taxpayer by the Fifth -- where his rights under the Fifth Amendment were violated. I have these reports here. Now, this is what I could do only in one day and this is what I was given in one day. And, again, the Statute of Limitation is a very important part. And opening the mail, I don't know twelve years ago what was -- what was contained in that letter. As far as I know, all of these documents may have been -- or -- or some important documents were in there. This is not the only letter that

was opened. It's twelve years, since I didn't know what it was all about, I threw the letters out; I don't keep envelopes.

THE COURT: Well, that's all argumentative, Dr. Geller, but I just want to know whether you have any facts that you want to testify to at this time --

THE WITNESS: Well, the facts are --

THE COURT: -- that would account --

THE WITNESS: -- to my -- it's too far back --

THE COURT: -- that would account for what happened --

THE WITNESS: -- in the -- now, aren't we now in 1976? Is this a fact? Where was I notified till 1973 that I was being given any explanation? Did I call the Internal Revenue and ask them to let me know what's all about it and instead of it I got letters in which they tell me to come down and settle this matter, to settle the case amicable. Now, these are all facts which must be taken into consideration by this Court.

THE COURT: All right. Does that complete your statement?

THE WITNESS: I have completed my statement.

THE COURT: Counsel want to examine the witness?

MR. COOK: Yes, Your Honor.

THE WITNESS: You want me to sit down?

A73

THE COURT: Yes. Right there.

THE WITNESS: May I point this thing out to you, Your Honor?

THE COURT: You may proceed.

THE WITNESS: My brother Morris Geller told me -- I was not present there -- that he did give this Special Agent what happened to these various securities.

THE COURT: Well, we'll ask the Special Agent. We'll ask him.

THE WITNESS: And the burden of proof rests with the respondent.

THE COURT: That's right. You're right.

THE WITNESS: So, let him prove that my brother didn't give him any information.

MR. COOK: Would you mark that for identification, please?

THE CLERK: Respondent's Exhibit Q is marked for identification.

CROSS-EXAMINATION

BY MR. COOK:

Q Dr. Geller, I'm going to hand you a document which appears to be your affidavit dated 1968. It's been marked as Respondent's Exhibit marked for identification -- is that "V"? Oh, Q, I'm sorry.

THE CLERK: Q.

A74

MR. COOK: -- Q. Would you please tell me if your signature appears on the second sheet?

A I don't see any signature at all.

Q On the second page of that?

A Yeah. Now, let me read it first.

Q Fine.

A May I read this into the record?

THE COURT: It will go into the record.

THE WITNESS: Beg your pardon?

THE COURT: It'll go into the record. You don't need to read it. It will be made a part of the record.

THE WITNESS: That will be a part of the record?

THE COURT: Right.

THE WITNESS: The respondent has shown me a statement which deals with the year 1950.

MR. COOK: Your Honor --

THE WITNESS: And I have signed an additional --

THE COURT: Let me see it a minute, Dr. Geller.

THE WITNESS: It -- this deals with 1950, has nothing to do with this matter whatsoever.

THE COURT: Dr. Geller, the statement does not restrict itself to 1950. You -- you merely have said here that you had signed corporation papers in 1950. Well, we've discovered that you've signed them in 1966, too. So -- but the rest of the statement refers to the time of its

signing where you said it wasn't doing any more business, in February, 1968. Is --

THE WITNESS: So what am I signing here? What am I supposed to do?

THE COURT: Well, is that your signature?

THE WITNESS: I only identify my signature.

THE COURT: All right.

THE WITNESS: Yes, I do.

THE COURT: Okay.

MR. COOK: Fine. Thank you. Your Honor, I move that it be admitted into evidence.

THE COURT: For what purpose, counsel?

MR. COOK: For the purpose of showing that he lied to Revenue Officer Gerald Gubin with regard to his having no knowledge as to what has happened to the corporate assets of 2377 Creston.

THE COURT: Well, he's told us that here. That's -- it will be admitted, but I find no inconsistency between that statement and what he's saying here.

MR. COOK: We're just trying to show another item of fraud, Your Honor, another act of --

THE COURT: That statement, counsel, perhaps you and I don't read the English language the same way, but whether -- if that statement is true, it proves that -- his case; if it's false, it disproves his case, but it's no

different than what he's tried to say on the stand right here, is it? That he doesn't know what happened to the money.

MR. COOK: That's correct, Your Honor. We --

THE COURT: Okay.

MR. COOK: -- were just trying to --

THE COURT: It will be received.

MR. COOK: Thank you. Would you mark this for identification?

THE CLERK: Respondent's Exhibit R is marked for identification.

MR. COOK: Your Honor, pursuant to the -- I'm sorry. Pursuant to the Federal --

THE WITNESS: You want to come nearer, please?

MR. COOK: Yes.

THE WITNESS: Talk louder.

MR. COOK: Pursuant to the Federal Rules, I believe this document can be entered without -- without testimony. It's a certified extract of the criminal docket entry of a case United States v. William Geller.

THE COURT: Be received.

MR. COOK: All right, Your Honor.

THE COURT: When was the property of this corporation sold, counsel, do your records show that?

MR. COOK: I believe the tax returns, Your Honor,

indicate that there was --

THE WITNESS: Are you talking to me?

THE COURT: No.

MR. COOK: No, Dr. Geller. I believe the tax returns indicate the property was sold during '65 and additionally in '66.

THE COURT: The sale of the --

MR. COOK: It doesn't specify --

THE COURT: -- real estate?

MR. COOK: Yes.

THE COURT: Well, who signed the deeds?

MR. COOK: We don't know that, Your Honor.

THE COURT: Well, did you try --

MR. COOK: Your Honor, the bulk of --

THE COURT: -- and find out?

MR. COOK: The bulk of the transferred assets we're referring to we believe consisted primarily of cash. The --

THE COURT: I know. Well, when was the property sold that produced the cash?

MR. COOK: That was --

THE WITNESS: I can give you --

MR. COOK: That had to be prior to --

THE WITNESS: -- this information.

MR. COOK: -- 1965.

THE WITNESS: The property was sold in 1960.

THE COURT: 1960.

THE WITNESS: Yeah.

THE COURT: Who signed the deeds? You don't know who signed the deeds?

THE WITNESS: No. Look here, it's so many years --

THE COURT: All right.

THE WITNESS: -- it's now -- it's about twenty-five years already -- no, it's twenty years. I do not remember.

MR. COOK: Your Honor, we have no further --

THE WITNESS: And I --

MR. COOK: -- questions of Dr. Geller.

THE WITNESS: -- may have signed it, I do not remember.

THE COURT: All right. You may be excused, Dr. Geller.

THE WITNESS: I beg your pardon?

THE COURT: You may be excused.

THE WITNESS: Thank you.

(Witness excused)

MR. COOK: Your Honor, we'd like to call --

DR. GELLER: Is it on the record that I have raised the issue of the Fifth Amendment?

THE COURT: You've raised all the amendments.

DR. GELLER: It's on the record. All right.

THE COURT: We'll give you --

DR. GELLER: Thank you.

THE COURT: We'll give you an unlimited Constitutional objection here.

DR. GELLER: I beg your pardon?

THE COURT: I say, we'll give you the benefit of all provisions of the Constitution.

DR. GELLER: Thank you very much.

MR. COOK: Your Honor, I'd like to call Mr. Mason Greenland, the CPA --

THE COURT: Well, let's get the agent up here first and get him out of the way.

MR. COOK: Fine. Mr. Schulman?

THE CLERK: You do solemnly swear the testimony you're about to give the Court in this case shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Please be seated. Would you state your name and address, please?

THE WITNESS: Special Agent Robert Schulman, Internal Revenue Service, Intelligence Division, Manhattan District.

THE COURT: Mr. Kars, if he wants --

MR. KARS: Yeah.

THE COURT: -- put in a chair right up here close.

MR. KARS: That's what I was telling him.

THE COURT: Put that chair up here and let him sit where he can hear him.

THE REPORTER: Is that "c-h"?

THE WITNESS: S-c-h --

ROBERT SCHULMAN,

called as a witness, having been duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. COOK:

MR. COOK: Could I have that marked for identification, please?

THE CLERK: Respondent's Exhibit S is marked for identification.

MR. COOK: Excuse me. Mr. Schulman, would you state your name and home address for the record, please?

A Home address?

Q Do you have --

A 1044 East 54th Street, Brooklyn, New York. I already stated my name for the record.

Q Fine. You are a Special Agent for the Internal Revenue Service, is that correct?

A I've already stated that for the record.

Q And how long have you been a Special Agent?

A Some twenty-one years.

Q Mr. Schulman, you had occasion to investigate the 1965 and 1966 Income Tax Returns of William and Doris Geller, is that correct?

A Yes.

Q And do you recall making a memorandum of that conference?

A I made several memorandums (sic) during the course of the investigation. I would have to have you weed out which --

Q Right. Right.

A -- of the memorandums you're referring to.

Q Right.

THE COURT: Do you have them all, counsel?

DR. GELLER: Are you Mr. Schulman?

THE WITNESS: Yes, sir.

THE COURT: Do you have them all?

MR. COOK: Do I have them all?

THE COURT: Yeah, all the memorandums he made.

MR. COOK: I have one at this time, Your Honor. There is another --

THE COURT: Well, let's get them all. Let's get them all.

MR. COOK: Okay.

THE COURT: We're not going to have one selected or two selected.

MR. COOK: Fine. Mr. Schulman, I hand you Exhibit --

THE COURT: We'll mark them, please --

MR. COOK: -- marked S. This one has been marked, Your Honor.

THE COURT: All right. Let's see this one first. Do you have a diary of this time, Mr. Schulman, that record that you fellows keep of where you went and what you did every day and so forth?

THE WITNESS: The diary is at my office, Your Honor. It's -- it's stored, it's catalogued. I do have entries in --

THE COURT: Well, I think we'll have to produce his diary, too, counsel.

THE CLERK: Respondent's Exhibit T is marked for identification.

MR. COOK: Your Honor, our purpose in putting Mr. Schulman on the stand is to show that Dr. Geller again attempted to deceive the Government by claiming that he had no relationship with the 2377 Creston Corporation --

THE COURT: Well, counsel, I think when you get relationship -- depends on what you mean by the word "relationship". Obviously, Dr. Geller signed the returns, so

he couldn't very well deceive anybody on that, could he?

MR. COOK: Your Honor --

THE COURT: I think what -- if -- if you're going to use this witness, I'd like to have his diary and I'd like to know when the case was assigned to him. This shows that the 2377 Creston Corporation was assigned to him. Now, you asked him whether he was examining Mr. Geller's returns. This memorandum does not relate to an examination of Mr. Geller's returns.

MR. COOK: Correct, Your Honor.

THE COURT: So, let's get all the memorandum here and get the witness's diary and then we'll find out what he did since Mr. Geller --

MR. COOK: Your Honor --

THE COURT: -- says he was -- he was -- his rights were violated, due process, and the like.

MR. COOK: Your Honor, may I inquire of the Court? Our purpose in entering the memorandums is to further show specific acts of fraud on the Government --

THE COURT: Well, I want it to show --

MR. COOK: -- to first satisfy --

THE COURT: I want it to either prove or disprove the witness's claim here, the petitioner's claim that his rights were violated and that the -- that the Government is withholding information. Now, that's equally

important. That --

MR. COOK: Your Honor, with --

THE COURT: That's equally important, and since he doesn't have counsel, I guess I'll have to insist that you produce all of this information.

MR. COOK: Your Honor, we have no information available at this time --

THE COURT: Well, we'll get that after lunch. We'll excuse Mr. Schulman and he can get the rest of his memoranda and get it tied in with his -- with the record of his activities and if he talked to the -- to this Mr. Klein or whoever it is, he may have talked to him, we don't know. And if he talked to the petitioner's brother; we don't know; do we?

MR. COOK: Then, I -- if I understand correctly on the issues of fraud, then, it would not be necessary to elicit Mr. Schulman's testimony for --

THE COURT: I don't know. I'm not -- I haven't decided whether there's fraud or there isn't yet.

MR. COOK: Can we then proceed with the entrance of the two --

THE COURT: But this memorandum has nothing to do with -- with the examination of the petitioner's return.

MR. COOK: For the purpose of indicating petitioner's --

THE COURT: This memorandum is not going in until I get them all and I get the diary, if that's what you're asking.

MR. COOK: Fine. And then --

THE COURT: Okay.

MR. COOK: -- can we put that off until this afternoon?

THE COURT: We'll put that off until this afternoon. I'm sorry; maybe I interrupted your order. So, we'll let you -- we'll excuse you until this afternoon, Mr. Schulman, and --

THE WITNESS: Thank you, Your Honor.

THE COURT: -- and then you can come back and tell us just what you did and what -- what the results were.

(Witness excused)

MR. COOK: Your Honor, I --

THE COURT: Do you have anybody here from Merrill Lynch? You didn't --

MR. COOK: Yes, we do, Your Honor.

THE COURT: Maybe we'd better have them identify these records since --

MR. COOK: Fine. Mr. Burke? Your Honor, that was part of the stipulated documents, I believe.

THE COURT: I know, but the --

MR. COOK: Do you still wish to have --

THE COURT: -- witness questioned as to whether or not this was his account or what it meant and so forth, so --

MR. COOK: Your Honor, if I may, Mr. Burke may not be in a position to -- he was not the account executive that had knowledge of Dr. Geller at the time.

THE COURT: Well --

MR. COOK: We do have the account executive present who --

THE COURT: Well, what I had in mind was that on this schedule of checks received from the Accounting Department, whether someone from Merrill Lynch can explain what this record is and what it purports to show, that's all.

MR. COOK: All right. Fine. Will you go ahead and be sworn, Mr. Burke?

THE CLERK: You do solemnly swear the testimony you're about to give the Court in this case shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Please be seated. Will you state your name and address, please?

THE WITNESS: My name is Clinton A. Burke. Is this home address or --

MR. COOK: Right.

THE COURT: Now, it's -- I guess it would be true, would it not, that if somebody came in and deposited -- said they wanted to deposit ten thousand dollars in the account of William Geller, No. 55555, the -- the cashier will take that money and deposit it, right? She's not going to question whether they had any right to make a deposit of the --

THE WITNESS: Well, I --

THE COURT: You don't turn down money at the cage, do you? If you wanted to take --

THE WITNESS: I wouldn't --

THE COURT: -- get some money out --

THE WITNESS: I wouldn't want to --

THE COURT: -- she might -- they might ask you for an ID, but --

THE WITNESS: Exactly. Some --

THE COURT: -- do you ever ask for an ID from a person that deposits money?

THE WITNESS: Not usually.

THE COURT: That's right. Okay.

MR. COOK: Normally, Mr. Burke, would the -- the money would go through an account executive, is that correct?

THE REPORTER: Mr. Cook, would you repeat that closer to a microphone?

A88

THE COURT: Now, Mr. Cook, if you're asking the witness whether or not the money would be physically delivered to an account executive -- is that what you're asking?

MR. COOK: Correct.

A I couldn't say that.

THE COURT: That's right.

THE WITNESS: I really couldn't say that. I couldn't say that.

MR. COOK: Fine. Thank you. We have no further questions of Mr. Burke.

THE COURT: Thank you.

DR. GELLER: May I -- I want to cross-examine him.

THE COURT: All right. You ask him. Very good. Excuse me.

CROSS-EXAMINATION

BY DR. GELLER:

Q You're Mr. "Mooney", is that right?

A Mr. who?

Q Well, what is your name?

A Mr. Burke, B-u-r-k-e.

Q Burt (sic)?

A Right.

THE COURT: Burke.

DR. GELLER: With a "k" or a "t"?

A89

A Yes.

Q And can you recall the nature of these deposits at all?

A Deposits would follow a -- a purchase of a municipal bonds, the account, when it was opened, would mention to me to handle primarily New York City issues, a purchase would be effected; as I -- to the best of my memory, the instruction to purchase was made by -- over the phone; the confirmation would be sent out to the address of record. Upon settlement date, Dr. Geller and almost invariably a young man, teenager, would arrive with a series of checks, deposit would be made; if the certificates of the bonds were -- were ready, I would -- the cashier of the local office would give me -- or present to Dr. Geller the certificates for counter signature or Dr. Geller and the young man, whom I understood to be his son, would come back one or two days later for the pickup of the securities.

Q Can you explain --

A On all occasions.

THE COURT: Were those bearer -- those be bearer --

THE WITNESS: Those are bearer bonds.

THE COURT: Those are all bearer bonds. And so that that meant that you always had to get a receipt from the recipient; right?

THE WITNESS: That's correct. There's a delivery

slip with all certificates. That would be signed, not in front of me, but I would accompany the client to the cage, window; I believe the cashier at that time was a Mike Brosnan.

THE REPORTER: Spell that, please? Brosnan?

THE WITNESS: I think he was -- I think it would be B-r-o-s-n-a-n, or a name similar --

THE REPORTER: Thank you.

THE WITNESS: -- spelling similar to that. The client would countersign the delivery slip and the bonds would be passed over the window; the securities to my memory were placed into on all -- it was a regular routine, into a black -- not an attache case, but soft carrying case.

MR. COOK: During --

THE COURT: Now, let me ask you, Mr. Brown, can you tell from that statement whether the -- the term of these bonds or not?

THE WITNESS: Yes, I can tell by looking at it. I don't have my reading glasses. Let's see. On -- this would be a transaction --

THE COURT: What was the general term of these New York City Housing bonds? Is that what they are?

THE WITNESS: Well, there's a whole series.

THE COURT: Yeah.

THE WITNESS: We're talking in terms over the

hall.

Q Well, you see? In what year --

A In 1965 --

Q -- was that?

A -- I was in the same office --

Q No, but in 1966 you --

A -- and I would hand deliver it over to you. I didn't hand the --

Q Oh, in 1966 you were in a different room altogether?

A That's correct.

Q Yeah.

A In 1965, I would walk you over to --

Q And you --

A -- the cashier's office --

Q -- were about forty feet from the delivery room and you can -- and you can say with reasonable certa nty that you saw me picking up these bonds?

A That's correct.

Q Were they mailed or picked up?

A You would come to me, to the best of my memory, and said, "I'm here to pick up my bonds," your son was generally there; I would walk you over to Mr. Brosnan and say, "Dr. Geller is here for his bonds," they would be picked out of the file and handed over to you.

A92

Q And how many times would you say you had done this?

A At least six. If not all the time -- and you're challenging me -- if not all the time, then surely at least six or seven occasions.

Q Well, to your knowledge were bonds ever mailed out?

A To my remembrance, they were not.

Q And you remember all this twelve years ago?

A That's correct. I -- well --

Q Do you know that this address -- will you take a look at the -- do you remember by any chance -- if you have such a marvelous memory that you recall such minute things twelve years ago, do you also have the -- do you also remember where my office was --

A I have no idea.

Q This you don't remember?

A I do not remember.

Q But you remember seeing me coming and picking up --

A That's --

Q -- bonds?

A -- correct.

Q This you do remember?

A Yes, sir.

Q I see. Now, is it not a fact that you never dealt in municipal bonds --

DR. GELLER: That's right.

THE COURT: You and your son came down and picked up the bonds.

DR. GELLER: It was I or my brother and most of the time my brother.

THE COURT: Well, the witness said -- testified otherwise, and I'm inclined to believe him, particularly in view of the fact that you perjured yourself in the petition itself.

DR. GELLER: I thank you.

So, you're not sure who called you?

A I can't reach that --

Q And that -- and since you were sitting on a right angle in that big room, you were not -- you had never seen me coming in or going out?

A That's correct.

Q That's correct. So can you deny here that it was my brother who picked up bonds sometimes or most of the time?

A I will state that it was you picked up the bonds.

Q Well, how could -- if you didn't see -- you were sitting on an angle there in the door, how could you --

A When the time --

Q -- be so sure?

A -- came for the pickup of these bonds, at least in

1965 in that room, you would say, "I'm prepared to pick up the bonds," I'd bring you over to Mr. Brosnan, I would walk away.

Q Now, you -- you yourself did not give me the bonds?

A No, I do not handle --

Q Um-hmm.

A -- physical securities.

Q So you don't know if I received any. You brought me over to the gentleman Mr. "Botley" (sic) but you don't know if he gave it to me or not?

THE COURT: Well, let me say this, Dr. Geller, maybe -- maybe --

DR. GELLER: I beg your pardon?

THE COURT: Maybe we can save a little time here. We're at the stage in this proceeding where it isn't a question of this witness proving that you got the bonds; it's a question of your proving that you didn't get them.

DR. GELLER: Well, so --

THE COURT: If he didn't see --

DR. GELLER: -- I will state --

THE COURT: If he didn't see anybody else get them, he can't --

DR. GELLER: Yeah. Yeah.

THE COURT: -- prove that you didn't get them for you, see?

to other brokers.

Q Yeah. You -- I called you and you told me that Merrill Lynch ordered you not to take any more orders and therefore you're leaving the place. Well, that's not importan a point, I'm not going to go into the character of the witness. I have no further -- do you notice -- do you remember that my office was on the lower East Side of 135 Ridge Street?

A I have a vague recollection of that, yes.

Q Well, when you make out a slip, a purchase slip or a selling slip or some other record, don't you put on the address?

A No, sir. That's automatically done by stencil after the account is opened.

Q Now, is there any possibility that these bonds or stocks were mailed out by mail?

A It's possible that several were.

Q And do you know the address here on -- take a look at the record here again.

A I see it is Bronx, yes.

Q Yeah. So there is a possibility that these bonds were mailed out this way?

A The bulk of them were picked up by you.

Q Now, all of them were picked up by me did you say?

A The bulk.

A96

Q The bulk.

A The bulk to my --

Q But you don't know --

A -- knowledge.

Q You don't know how many or what?

A Well, I believe that there are probably at least a dozen transactions here, I can count them up, and I'll testify that there are at least six, perhaps nine occasions, that you came down and --

Q You are -- you're --

A -- they were delivered to you.

Q -- entitled to your opinion. I can't help it.

DR. GELLER: I have no further questions, Your Honor.

THE COURT: Thank you, Mr. Brown.

MR. COOK: Your Honor --

THE COURT: You want to --

MR. COOK: -- just one more thing --

THE COURT: All right.

MR. COOK: -- before -- Mr. Brown has testified I believe that a young man accompanied Dr. Geller on a number of occasions and that he believed that to be his son. Could we ask Dr. Geller if he just to be --

THE COURT: Well, Dr. Geller isn't testifying.

MR. COOK: I -- I understand that, Your Honor, but if he --

A97

William Geller?

A Yes, sir.

Q And for 2377 Creston Corporation?

A Yes.

Q Handing you Exhibits marked K through --

THE COURT: Just take them one at a time.

MR. COOK: Handing you Exhibit K, Mr. Greenland; could you identify that?

A Yes, that's my handwriting.

Q That's your handwriting. Could you indicate to the Court what records were provided you in the preparation of that return?

A The records were -- the information was submitted by Dr. Geller.

Q And were these books of original entry?

A There were no books of original entry.

Q They were provided --

A Provided either on slips of paper or -- slips of paper or else he came -- he may have come down to the office.

Q So, total income and expenses were totaled for you?

A Yes.

Q All right. I'm handing you Exhibit J; can you identify that return?

A Yes. Prepared by me also.

Q And the books and records presented to you for that return?

A The same way. No --

Q No books of original entry?

A No, there were no books of original entry. We didn't -- we audited no books whatsoever.

Q The income and expenses were provided --

A Were submitted to us, yes.

Q Fine. Handing you Exhibit M.

A This was prepared by us also.

Q Did you say "by us" or by yourself?

A Prepared by me, in other words, in our office.

Q It's your handwriting?

A Yes. Yes. It's my --

Q Fine.

A -- handwriting.

Q And the same as far as the books and records?

A That information was submitted by Dr. Geller.

THE COURT: Let me see that return, please, Mr. --

THE WITNESS: Sure.

THE COURT: Did you know at that time who Murray Geller was?

THE WITNESS: Murray Geller was the son of the Doctor.

THE COURT: I see. And who was Irwin Geller?

THE REPORTER: What street was that?

THE WITNESS: Which -- one thirty -- when we prepared the return, the address was --

THE REPORTER: Thank you. That's fine.

THE WITNESS: -- one -- we used 135 Ridge Street.

THE REPORTER: Okay. Fine.

THE COURT: All right. Exhibit M, again, has a writing down at the bottom, "We have no funds." Is that your writing?

THE WITNESS: No, sir, that is Dr. Geller's handwriting.

THE COURT: All right. Okay.

MR. COOK: And with these last two exhibits, the same circumstances, no books of original entry?

A Correct. Correct.

Q Do you recall preparing returns for Morris Geller?

A Yes.

Q And do you recall at all where he lived at the time? Were you familiar with that?

A Yes, I knew Morris Geller. I knew Morris Geller.

Q And do you know where he lived?

A Morris Geller lived -- I believe he lived in Scarsdale. I --

Q Do you know where his business office was?

A On East 149th or 148th Street in Manhattan.

every minute ," and I thought he was mentally defective and I walked out on him. Do you remember that?

A Dr. Geller --

Q Don't remember that either.

A Dr. Geller, you called our office, you told us you were having a tax problem, we said we would take you -- refer you to a tax attorney; I did not set the attorney's fees and I have nothing to do with attorney's fees and that is --

Q Isn't it a fact that you took me there?

A We referred you to an attorney, we --

Q Not referred me --

A -- we came down --

Q -- you took me there?

A We came down -- no, we didn't take you; we went down with you to the attorney's office.

Q To the attorney, that's right. And you -- all right, listen. I remember. So --

A We didn't take you, you're not a baby.

Q So you took me down to the attorney's -- the attorney?

A Yes.

Q Yeah. That's true.

THE COURT: Dr. Geller, what does all of this have with the case?

A101

DR. GELLER: Well, I'll tell you what involves the case --

THE COURT: Okay.

DR. GELLER: -- or what I want to bring out. I want to bring out that Mr. Topel is the real accountant here and he -- and he was consulted by Morris Geller and by other members of the corporation.

THE COURT: Well --

DR. GELLER: It is true what Mr. Greenland stated that I brought him these figures and he just put them down on the --

THE COURT: All right. Well, that's --

DR. GELLER: -- on the paper.

THE COURT: -- all. This -- That's all this witness --

DR. GELLER: Yeah. See, if Mr. Topel --

THE COURT: -- has testified to.

DR. GELLER: -- would be here, he would testify that Morris Geller --

THE COURT: Well --

DR. GELLER: -- and other people owned the corporation --

THE COURT: I don't know what Mr. --

DR. GELLER: -- spoke to him.

THE COURT: -- Mr. "Tropel", or whatever his name,

would testify to and in his absence I'm not going to make any -- any assumptions as to what --

DR. GELLER: Well, that's all I have to say --

THE COURT: -- he'd testify to.

DR. GELLER: -- that this man, I did not consider my accountant, he was a clerk there as far as I know, I don't know the inside working of it.

THE COURT: Well, I'll give you some advice that isn't going to cost you a hundred dollars a minute; if you don't come up with some answers as to what happened to these bonds, I have no alternative but to find against you for the full amount of the assessment, tax and penalties. So, I would suggest that you direct your efforts towards accounting for the bonds and not worrying about whether this witness was the bookkeeper or the accountant or the manager of the account or whether the lawyers charged you more -- more than you were willing to pay. That has nothing to do with the case here, see. All I -- all you should be concerned with is that the testimony of the gentleman from Merrill Lynch, and I have no reason to believe that he is not telling the truth, puts this money in your pocket. Now, the monkey is on your back and if you can't tell us what happened to it, you might as well pay the tax on it.

DR. GELLER: I have no further questions.

THE COURT: And with that we'll recess for lunch;

entered. During the course of the trial, I've changed my mind and I would like now to attempt to have some of these things stipulated so to --

THE COURT: Let's see what you have.

MR. COOK: Okay. Fine. Thank you. First, Your Honor, could we clear the record for just one thing? Could I ask Dr. Geller if my understanding is correct that his two sons are now in Israel?

THE WITNESS: I didn't hear a word you said.

THE COURT: Are your two sons now in Israel, Dr. Geller?

THE WITNESS: I beg your pardon?

THE COURT: Are your sons both in Israel now? I say, are your sons in Israel now or are they here?

THE WITNESS: Well, I don't know where they are.

THE COURT: You don't know where they are?

THE WITNESS: No.

THE COURT: You mean they went the same way as the bonds, they disappeared?

THE WITNESS: I didn't say so, Your Honor. I said --

THE COURT: I see. Okay.

THE WITNESS: -- I gave it to Morris Geller --

THE COURT: All right.

THE WITNESS: -- and it's been declined.

THE COURT: Okay.

MR. COOK: Is my recollection correct that earlier on this morning he indicated that --

THE COURT: I thought you said earlier that your two sons were in Israel. Is -- your two sons, you said they were in Israel?

THE WITNESS: No. No.

THE COURT: Well, where are they?

THE WITNESS: The one son is in Israel.

THE COURT: One son is in Israel.

THE WITNESS: Um-hmm.

THE COURT: Where's the other son?

THE WITNESS: He's in the United States somewhere.

THE COURT: Where?

THE WITNESS: I don't know.

THE COURT: You don't know? You don't have his address?

THE WITNESS: I could produce him within a day or two.

THE COURT: You never hear from him?

THE WITNESS: Hardly. I could produce him in a day or two.

MR. COOK:: Thank you, Your Honor.

THE COURT: Let me say this, counsel; I think I

know why you'd like to find him but that -- that should have been done long before the case was set for trial. It's a little late to start thinking about that now.

MR. COOK: I agree, Your Honor. We were unaware at that time of the proximity of Mr. Geller's sons to the actual transaction with Merrill Lynch. If I may, Your Honor?

THE COURT: You may.

THE CLERK: Respondent's Exhibits U, V and W are marked for identification.

THE COURT: All right. Let me see those. Is this your signature on this card, Dr. Geller?

THE WITNESS: Yes, it is.

THE COURT: All right.

THE WITNESS: It is.

THE COURT: Exhibit U will be received. Is this your signature, Dr. Geller?

THE WITNESS: It is.

THE COURT: All right. Exhibit V will be received. Is this your signature, Dr. Geller?

THE WITNESS: Yes, it is.

THE COURT: All right. Exhibit W will be received.

THE CLERK: Respondent's Exhibits X, Y and Z are marked for identification.

THE WITNESS: Thank you.

(Witness excused)

DR. GELLER: Are we finished, Your Honor?

THE COURT: No, we haven't finished yet. We still have to --

DR. GELLER: Oh.

THE COURT: -- hear from the -- from the Special Agent here.

MR. COOK: Your Honor, respondent would now call Special Agent Robert Schulman.

THE COURT: All right. Mr. Schulman.

THE CLERK: Sir, would you restate your name, please?

THE CLERK: Robert Schulman, Special Agent, Internal Revenue Service.

THE COURT: All right. You're still under oath, Mr. Schulman.

THE WITNESS: Yes, Your Honor.

ROBERT SCHULMAN,

recalled as a witness, having been previously sworn, resumed the stand and testified further as follows:

THE COURT: Suppose you tell us now when either the corporation or the individual, the 2377 Creston Corporation or Dr. Geller first came to your attention for purposes of examination.

A107

THE WITNESS: Preliminary investigation on 2377 Creston Corporation was assigned to me -- I'm reading from my office administrative --

THE COURT: Right.

THE WITNESS: -- files --

THE COURT: Right.

THE WITNESS: -- was assigned to me in October of 1968.

THE COURT: October of 1968. And what did you do then?

THE WITNESS: I conducted an investigation on the corporation.

THE COURT: I mean, what did you -- how did you -- where did you -- did you go anyplace then? What was your first act after you had gotten the assignment?

THE WITNESS: I can't recall unless I make reference to another file which I don't know is immediately available -- I see it is available, Your Honor. I -- we keep also administratively a chronological worksheet.

THE COURT: Worksheet. All right.

THE WITNESS: I read from my chronological worksheet and my very first act after the case on the corporation was assigned to me was reviewing two previous closed cases on William Geller.

THE COURT: All right. Well, how did you

associate William Geller with the corporation? I thought you said just the corporation had been assigned to you.

THE WITNESS: Well, we have a -- a filing system which -- which ties in names of previous cases with corporations mentioned among those previous cases and when we get the cases assigned, it makes mention that there was a previously related case under so and so name.

THE COURT: Well, after you did that, then did you contact anybody?

THE WITNESS: My first contact with -- was with a Revenue Officer Gubin.

THE COURT: Well, then, after you contacted Mr. Gubin, did you contact anybody?

THE WITNESS: I contacted a Revenue Officer Sova.

THE COURT: Well, after you --

THE REPORTER: Spell that?

THE WITNESS: S-o-v-a.

THE COURT: After you contacted --

THE REPORTER: Thank you.

THE COURT: -- Revenue Officer Sova, did you contact anybody?

THE WITNESS: I spoke to Mr. Mason Greenland --

THE COURT: All right. When did you first -- when did you contact Mr. Greenland?

THE WITNESS: October 27th, 1968.

A109

THE COURT: October 27th, '68. Was that on the phone or did you --

THE WITNESS: That was in order to set up an appointment with Mr. --

THE COURT: I see.

THE WITNESS: -- Greenland.

THE COURT: And when did you have that appointment?

THE WITNESS: It appears that I had my appointment with Mr. Greenland on January 21st, 1969.

THE COURT: All right. How is it it took you three months to -- to have an appointment with him?

THE WITNESS: There are interim entries whereby Mr. Greenland begged off, so to speak, on appointments. I -- I can --

THE COURT: No. Now, between --

THE WITNESS: -- read the file in where --

THE COURT: All right. Between October and January 21st, did you contact anybody else?

THE WITNESS: Yes. I -- I contacted a Mr. Al Podrid, the --

THE REPORTER: Spell that?

THE WITNESS: P-o-d-r-i-d.

THE REPORTER: Thank you.

THE COURT: All right. And who was Mr. Podrid?

A110

THE WITNESS: He was the taxpayer's prior accountant.

THE COURT: And did you have a meeting with him?

THE WITNESS: No, I did not.

THE COURT: So you didn't. Is there any --

THE WITNESS: Would you like to know why, Your Honor?

THE COURT: Well, I don't think that's admissible. When did you -- did you see anybody prior to January 21, '69?

THE WITNESS: Any -- I saw no party outside --

THE COURT: Of your own office.

THE WITNESS: -- the Service.

THE COURT: All right. Now, did you contact Dr. Geller prior to January 21, nineteen sixty --

MR. COOK: Your Honor, excuse me. Would it be appropriate to enter a memorandum of that conference of January 21st at this time?

THE COURT: Well, we haven't gotten to that yet.

MR. COOK: Fine.

THE COURT: Did you contact Dr. Geller on January twenty -- before January 21, 1969?

THE WITNESS: I did not, Your Honor.

THE COURT: I see. Did you ever contact Dr. Geller?

A111

THE WITNESS: I did, Your Honor.

THE COURT: When?

THE WITNESS: He was sent a -- I sent a letter to Dr. Geller dated January 30th, 1969, asking him to appear in my office, on -- on February 5th; for him to appear on February 5th, 1969.

THE COURT: Now, did he appear on February 5th, 1969?

THE WITNESS: No, Your Honor.

THE COURT: Did he respond to that letter?

THE WITNESS: An unknown party cancelled the appointment on behalf of the taxpayer.

THE COURT: All right.

THE WITNESS: The party wouldn't identify themselves over the phone.

THE COURT: I see.

THE WITNESS: And the party said the taxpayer was to call me by February 7th for a new appointment.

THE COURT: All right. Did you contact anybody else at that time? We're up to February 5th now.

THE WITNESS: I tried to contact the taxpayer and was unsuccessful on two days thereafter, February 11th and 12th.

THE COURT: So as the Court understands it you got this assignment back in October, '68, and you talked to

some Revenue Agents who had previously had experience with examination of the taxpayer or the company, and you contacted Mr. Greenland and then you finally got an appointment to talk to him on January 21, 1969, is that right?

THE WITNESS: That's correct, Your Honor.

THE COURT: All right. Now, getting into after February 5, 1969, did you contact anybody?

THE WITNESS: Well, yes, I sent a request letter to -- to a Federal Savings & Loan Association relative to accounts in the corporate name as well as names of the principal of the corporation or any of his family.

THE COURT: Now, when was that letter sent?

THE WITNESS: February 24th, 1969.

THE COURT: Well, had you still been trying to contact Dr. Geller?

THE WITNESS: Yes. On February 12th, prior -- after unsuccessful attempts, I sent a second request letter to the taxpayer --

THE COURT: All right.

THE WITNESS: -- asking him to come in.

THE COURT: When did you next contact him?

THE WITNESS: I was able to effect a conference with Mr. (sic) Geller on March 5th, 1965.

THE COURT: So you had --

THE WITNESS: Or '69. I'm sorry.

THE COURT: So you had the first meeting with the taxpayer on March 5th, 1969?

THE WITNESS: That's correct, Your Honor.

THE COURT: All right. Now, do you -- do you recall what transpired at that meeting?

THE WITNESS: I could only recall bits from my memory, Your Honor, however, I know that I had made up a memorandum of that conference with --

THE COURT: All right.

THE WITNESS: -- the taxpayer which I reduced --

THE COURT: All right.

THE WITNESS: -- to writing and which would --

THE COURT: All right. And do you have that memorandum here in Court?

THE WITNESS: I believe that this is it, Your Honor.

THE COURT: We'll mark that for identification. With the right to remove the original and substitute photo -- Xerox copies.

THE CLERK: It's already marked for identification as Exhibit S.

THE COURT: Exhibit S. All right. Would you look this over and --

THE WITNESS: I've scanned through my three-page memorandum of that conference, Your Honor.

THE COURT: Well, let me ask you, Mr. Schulman, when -- when the assignment first came to you it related to 2377 "Preston" Corporation -- Creston Corporation, is that correct?

THE WITNESS: Yes, Your Honor.

THE COURT: And presumably it was not a regular examination because you don't conduct regular examinations, is that right?

THE WITNESS: That's correct, sir.

THE COURT: Well, what was 2377 "Preston" Corporation -- Creston Corporation supposed to have done that excited the interest of the office of special agent? In other words, what were you supposed to investigate?

THE WITNESS: Um --

THE COURT: Was it the failure to file a return for 1967?

THE WITNESS: That's correct.

THE COURT: That's what you were sent out to investigate?

THE WITNESS: The failure to file a return for '67.

THE COURT: Right. All right. Counsel for the respondent, what's the relevancy of this?

MR. COOK: The relevancy of the particular conference, Your Honor?

THE COURT: Yeah. That is correct.

MR. COOK: During the conference as I understand Dr. Geller denied having any -- personally having any knowledge of the corporation.

THE COURT: I don't see that. He says the corporation didn't do any business in '67; isn't that right?

MR. COOK: He also indicated that he didn't know who the officers were; he indicated that -- give me a moment.

THE COURT: He identified the signatures on the '65 and '66 returns; said he was simply an employee, does not know who his employer was. Well, he's said that here, hasn't he? That he was no longer connected with the corporation in 1967. He had no income or expenses and didn't file a return; that he'd never had any stock and he didn't know who the officers were.

MR. COOK: Correct, Your Honor. That's what --

THE COURT: Well, he still says that --

MR. COOK: That's what --

THE COURT: -- doesn't he? Now, that's -- that's what he says today, isn't that right?

MR. COOK: Yes, Your Honor.

THE COURT: Yeah. Now, as Mr. Schulman has said, at this time he was not endeavoring to investigate whether Dr. Geller had any tax liabilities for the taxable years

A116

'65 and '66. This had nothing to do with '65 and '66, did it?

MR. COOK: No, Your Honor, at the time --

THE COURT: All right.

MR. COOK: -- of that conference.

THE COURT: So --

MR. COOK: Although it still I believe at the time that the conference was held, the statements by Dr. Geller were made knowing that he knew -- or we believe we will prove that he knew what 2377 Creston Corporation was --

THE COURT: Well, he's said the same thing up here.

MR. COOK: -- the officers are --

THE COURT: He's -- he says that again today, so there's nothing inconsistent about that, is it? What he said at this time he still says. The Court would have to rule that this statement is not relevant to the issue we have before us. Now, let's see, when did you have your next meeting, Mr. Schulman, or did you have any more meetings?

THE WITNESS: I --

THE COURT: Did you ever have another meeting with Dr. Geller?

DR. GELLER: May I ask --

THE COURT: No, just wait till we get through,

then you can ask him.

THE WITNESS: You'll get your chance at me --

DR. GELLER: I beg your pardon?

THE WITNESS: -- Dr. Geller, as soon as the Judge --

THE COURT: You'll have a chance.

DR. GELLER: Beg your pardon?

THE WITNESS: You'll have your chance.

DR. GELLER: Yeah. I can look at that for now.

THE COURT: Did you ever have another --

DR. GELLER: Unfortunately --

THE COURT: -- meeting with Dr. Geller?

DR. GELLER: -- I lost my hearing. That's what I'm inquiring about. It's all right.

THE WITNESS: Not to the best of my recollection.

THE COURT: I see. So, this was the only meeting. Well, were you the one that decided that Dr. Geller had omitted income for '65 and '66?

THE WITNESS: I conducted the entire investigation and wrote the final report.

THE COURT: Well, then, when did you decide that? When did you write your report?

THE WITNESS: November 23rd, 1971.

THE COURT: November 23rd, 1971. And you didn't

speak to Dr. Geller again before you wrote this report?

THE WITNESS: I spoke to his representative.

THE COURT: Who was his representative?

THE WITNESS: Samuel Korot, K-o-r-o-t.

THE REPORTER: Thank you.

THE COURT: Did he have a power of attorney?

THE WITNESS: Yes, Your Honor.

THE COURT: All right. When did he get into the act?

THE WITNESS: Very close to the -- to the time the final report was written.

THE COURT: Yes.

THE WITNESS: Our procedure is in our office to send a letter to the taxpayer indicating that we contemplate action and that -- this was the procedure at that time -- and that he can come forward and present any facts he feels should be -- that may bear on -- on the determination relative to the recommendation in the final report.

THE COURT: And what did Mr. Korot say?

THE WITNESS: That he -- Mr. Korot indicated that he had just recently, perhaps a week or two weeks, gotten -- that he was hired to represent to Dr. Geller and that he requested additional time, possibly four months, to conduct his own investigation so that he might more properly represent the taxpayer.

THE COURT: All right. Now, up until this time had you talked to the -- to Mr. Geller -- or Dr. Geller's brother?

THE WITNESS: Which brother are you referring to, Your --

THE COURT: Well, I understand he only has one brother, didn't he? He had two sons and one brother; is that right?

DR. GELLER: Yeah.

THE COURT: Or had you talked to anybody?

THE WITNESS: I might --

THE COURT: I asked you once and you said no and I must say I'm kind of surprised that -- that you'd move over from a corporate case to an individual case presumably when you came across these bank withdrawals, but not ask anybody else about it. Now, unless you people were awfully rushed at this time, I wouldn't think that you'd put out a report on the basis of interviewing one witness one time.

THE WITNESS: No, Your Honor, I interviewed some thirteen or fourteen witnesses or --

THE COURT: Now, suppose you give us the names and the dates when you interviewed these witnesses.

THE REPORTER: And spell the names, please?

THE WITNESS: Mason Greenland.

THE COURT: And that was January 21st, right?

THE WITNESS: Correct, Your Honor.

THE COURT: All right. What's the next one?

THE WITNESS: I was in by letter communication, Merrill Lynch.

THE COURT: And how many witnesses you interviewed.

THE WITNESS: I don't have the name of the witness, Your Honor. We usually list it as -- the witness would -- relative to corporate records that were -- or copies of corporate records sent to us would be a representative of --

THE COURT: Well --

THE WITNESS: -- Merrill Lynch.

THE COURT: -- we're not -- you and I, you know, aren't -- we're not talking about that now. Let's get right back to him. You talked to Mr. Greenland. Now, did you ever talk to Dr. Geller again?

THE WITNESS: No.

THE COURT: Did you ever talk to Dr. Geller's brother or any one of his brothers if you find out there were two?

THE WITNESS: I spoke to --

THE COURT: You know more than we do.

THE WITNESS: -- two brothers of Dr. Geller.

THE COURT: Two brothers. Now, when did you interview them? And give us the names and the dates and let's have the memoranda.

THE WITNESS: I visited Mr. Morris Geller --

MR. COOK: Your Honor, excuse me; may I hand to Special Agent Schulman a copy of a summons and a letter relating to Morris Geller that --

THE COURT: I'm not interested in that; I just want to find out when he visited him.

THE WITNESS: I can't recall the date unless I make reference to that summons, Your Honor.

THE COURT: Well, you must have written it out; you wrote a memorandum of the visit, didn't you?

THE WITNESS: I don't believe so, Your Honor.

THE COURT: Well, I hate to say so but I don't believe you, Mr. Schulman.

THE WITNESS: Well, then, you're privy to something I can't recall.

THE COURT: Because it's my --

THE WITNESS: Perhaps I did.

THE COURT: -- understand (sic) that that's automatic procedure with you people.

THE WITNESS: No, it isn't, Your Honor. It's based on whether anything of import or what we believe --

THE COURT: And you don't --

THE WITNESS: -- to be import --

THE COURT: You don't know what Morris Geller told you?

THE WITNESS: Yes, I do, Your Honor.

THE COURT: Well, you're going to testify to that without a memorandum, huh?

THE WITNESS: Yes, Your Honor.

THE COURT: All right. Who -- when was the date of that? You don't know when that interview was?

THE WITNESS: I know I issued the subject summons on that date.

THE COURT: All right. Who else did you talk to?

MR. COOK: Excuse me, Your Honor. My understanding of the activities that went on about that period of time are not that there was a formal conference had --

THE COURT: I don't care what you understand, I just want to find out what the -- what this gentleman did.

THE WITNESS: Well, what I did relative to Morris Geller, and I can't recall the date, it was sometime --

THE COURT: You sent him a summons and you had a meeting with him; right?

THE WITNESS: Well, I had a meeting with him and served him a summons.

THE COURT: Yeah. All right. And now who -- who's the next -- what was the summons for?

THE WITNESS: The --

THE COURT: To appear?

THE WITNESS: Well, I -- I visited him at his place of business --

THE COURT: Right.

THE WITNESS: -- asked him several questions relative to his brother; he was not responsive so I gave him a summons to appear.

THE COURT: All right. Did he appear in -- pursuant -- answer to that summons?

THE WITNESS: He wrote me a note in answer to that summons.

THE COURT: I see. All right. Who else did you contact?

THE WITNESS: I contacted the -- Dr. Geller's older brother Solomon Geller.

THE COURT: All right; Solomon. When did you contact Solomon?

THE WITNESS: Once again, I'd have to make reference to a -- to a memorandum of conference or a formal question --

THE COURT: All right. And --

THE WITNESS: -- and answer statement with Solomon.

THE COURT: -- doesn't your diary or your sheet

on this show when you contacted Solomon?

MR. COOK: Your Honor, may I now hand Special Agent Schulman a copy of the transcription of a conference that was held between himself and Solomon Geller?

THE COURT: Well, let's see if he's got a record of it here. How do we know whether that's -- that's even valid or genuine?

THE WITNESS: I don't have a record in my chronological worksheet; I have a --

THE COURT: You have no record of your meeting with Dr. -- Mr. Solomon Geller?

THE WITNESS: I may have it in my diary; it's not in my chronological worksheet that we keep within the case file. If you give me the date, I could refer to my diary --

THE COURT: All right, what's the date -- what's the date that this meeting is purported to have taken place?

THE WITNESS: July 26th, 1971, 11:10 A.M. to twelve P.M.

THE COURT: All right. Let me have a copy of that. Does your record show a meeting on July 21 (sic) nineteen seventy --

THE WITNESS: I have -- may --

THE COURT: -- July 26th, 1971, with Mr. Solomon Geller?

A125

THE WITNESS: Yes, Your Honor.

THE COURT: Okay. Now, when did you -- did you contact anybody else?

THE WITNESS: Several banks, Knickerbocker Federal Savings & Loan, Westside Federal Savings & Loan.

THE COURT: You didn't contact any more non-business relations, huh, such as Dr. Geller's son or Dr. Geller -- you said you didn't go back to Dr. Geller himself?

THE WITNESS: I -- I contacted a friend of Dr. Geller's son.

THE COURT: Who was that?

THE WITNESS: I can't recall his name.

THE COURT: I mean, don't you have it there?

THE WITNESS: Probably not.

THE COURT: But you never contacted Dr. Geller's sons?

THE WITNESS: No, Your Honor.

THE COURT: And you never contacted Dr. Geller's other brother? You never had an interview with him?

THE WITNESS: Which -- are you speaking of Morris Geller, Your Honor?

THE COURT: That's right.

THE WITNESS: I spoke to him but I wouldn't call it an interview since he was not responsive.

THE COURT: I see. Dr. Geller, you want to look at this transcript of an interview with Mr. Solomon Geller and you can decide whether or not you want that introduced into evidence.

DR. GELLER: Your Honor, you want me to read the whole thing?

THE COURT: Well, I think so. Is your brother alive today?

DR. GELLER: I haven't -- I haven't spoken to him about six, seven years. I don't know.

THE COURT: But he's still alive, is that right, Solomon --

DR. GELLER: Yes. I haven't --

THE COURT: -- he's living?

DR. GELLER: -- spoken to him for years.

THE COURT: He's living. Does the respondent want to offer this in evidence?

MR. COOK: Yes, Your Honor.

THE COURT: Let's mark it for identification.

THE CLERK: Respondent's Exhibit AF is marked for identification.

THE COURT: Now, Dr. Geller, the respondent has offered this in evidence. If you wish, you have a right to object to it because --

DR. GELLER: I have a right to object to what?

THE COURT: To this being receive in evidence because of the fact that your brother -- you're entitled to have your brother brought in here and testify in person. But if you --

DR. GELLER: I -- I don't want --

THE COURT: -- if you want to waive --

DR. GELLER: I can't --

THE COURT: -- that right, why, you can consent to have this admitted in evidence.

DR. GELLER: I have no objection.

THE COURT: You have no objection to having this admitted?

DR. GELLER: No, I don't.

THE COURT: Well, you'd better read it first but if you have no objection, we'll receive it. Okay. We'll receive it.

DR. GELLER: No, I don't.

THE COURT: All right. Now, do you have any questions you want to ask Mr. Schulman?

DR. GELLER: Yeah.

THE COURT: Go right ahead.

CROSS-EXAMINATION

BY DR. GELLER:

Q Of course, I must admit that I didn't hear too well everything, but I try to remember what you've said. We

are here today in reference to a deficiency of 1965 and 1966. Have you ever told me about this deficiency, about it before? Have you ever told me about the deficiency?

A It was told to your representative --

Q I'm not --

A -- Mr. Korot.

Q I'm talking to me.

A To you?

Q Yeah.

A No, since you didn't respond, you sent your representative, it was told to your representative.

Q Don't you remember that we had a conference, I and you? Of course, you look a little bit old and you may not recognize me, and I -- I can refresh your memory.

A Please do.

Q Hmm?

A Please do.

Q Yeah. Well, I came up to your office around -- I don't know what floor, and we were talking about generalities which had nothing to do with tax matters whatsoever but -- excuse me. Now, what I'm trying to bring out here -- I'm not trying to criticize you; I'm trying to ask you one question only; did you ever tell me about a deficiency for 1965 or 1966? Because I appeared in this Court today and I have testified that nobody ever told me about these

deficiencies and what they are for in spite of the fact that I make numerous attempts to contact the Internal Revenue Office. The -- in response I got letters telling me to come down and settle the case. Again, I repeat, did you ever tell me about these deficiencies and what they are for?

A Are you speaking of tell you or tell your representative that you --

Q Who's my representative?

A Mr. Korot.

Q Mr. Korot was not our representative in this matter. He was -- I don't know what year -- it is true that he represented me in some tax matter, but I don't know. Well, I'm not interested in what you discussed with Mr. Korot; I'm interested did you ever tell me?

A You personally?

Q Yeah.

A To your face?

Q Yes.

A No.

Q No. So that's all I want to know. I have been stating to this Court that I had no knowledge until -- today is Wednesday -- Monday afternoon when -- when one of the attorneys told me in the hall what this was all about. When they got through talking, he says, "Now, do

you know what it's all about?" I says, "Now I know. You told me, so I know." That's all I wanted to know, please.

THE COURT: Are you all finished?

DR. GELLER: I beg your pardon?

THE COURT: Are you finished with Mr. Schulman? I say, have you concluded your questioning of --

DR. GELLER: Yeah. That's all.

THE COURT: All right. Counsel for the respondent, do you have any questions to ask Mr. Schulman?

MR. COOK: Yes, I do, Your Honor.

THE CLERK: Respondent's Exhibit AG and AH are marked for identification.

REDIRECT EXAMINATION

BY MR. COOK:

Q Mr. Schulman, I'm handing you Respondent's Exhibit AG and AH marked for identification. Would you please review them and advise the Court -- give the Court a description of what they appear to be?

A This is an Internal Revenue Service administrative summons issued to Morris Geller, doing business as Geller Realty Management Company at 318 East 149th Street, to appear in my office in the matter of the tax liability of William Geller.

DR. GELLER: When was he supposed to appear?

THE WITNESS: On July 26th, 1971, he was to

appear.

MR. COOK: And your signature appears at the bottom of that summons?

A My signature appears as issuer of the summons as well as the certificate of summons, signed on the back, which bears the date I issued it, the time, who I issued it to and it's signed by me.

DR. GELLER: It was issued on the 26th of July or for him to appear on July --

THE WITNESS: It was issued on July 15th requesting his appearance for July 26th.

DR. GELLER: I -- but it was a few days later and, you know.

MR. COOK: And the next exhibit, if I may, Dr. Geller?

A The next document I have in my hand is a certified letter addressed to me in my office dated July 21st, 1971, signed, "Yours truly, Morris Geller," with a signature below.

Q And your -- the stamp of the Intelligence Division appears thereon?

A The stamp of the Intelligence Division discloses that it was received, Intelligence Division, Internal Revenue Service, on July 26th, 1971.

DR. GELLER: May I see this?

MR. COOK: And to the best of your knowledge that was Morris Geller's response to the summons served upon him --

DR. GELLER: Your Honor --

THE WITNESS: Yes --

MR. COOK: -- is that correct?

A -- to the best of my knowledge.

DR. GELLER: -- the attorney is submitting a letter signed by Morris Geller in which he tells him, "Please be advised that I do not have any records of transactions with or for the benefit of William Geller for the years 1965, 1966, inclusive. Also, I do not have any records of stock transactions managed for the benefit of William Geller," which I have testified, he didn't manage my affairs, I managed his affairs. And it -- Morris Geller was the -- was one who worked for the corporation. He didn't do anything for me, I never claimed that. I worked for him.

THE WITNESS: Your Honor --

THE COURT: On what basis is this admissible, counsel?

MR. COOK: On the basis of it being a response to a summons -- excuse me. On the basis of it being --

THE COURT: I know, but it isn't a response by this taxpayer. Just because you summoned a dead man and

he writes you a letter, that doesn't make it admissible, does it?

THE WITNESS: It was in response to this summons, Your Honor. I didn't --

THE COURT: I know, but --

THE WITNESS: -- read the entire summons.

THE COURT: -- this isn't the taxpayer we have here.

MR. COOK: Fine, Your Honor.

THE COURT: I don't know that it disproves anything that the taxpayer has testified to.

MR. COOK: Your Honor, I believe that the taxpayer has testified that he conducted certain transactions on behalf of his brother Morris Geller.

THE COURT: This letter doesn't say he didn't.

DR. GELLER: So I can hear, would you talk a little louder, please? Because unless it is clear --

THE WITNESS: This letter --

DR. GELLER: -- then I cannot answer.

THE WITNESS: The records requested --

THE COURT: See, the problem with this, counsel, is that the summons is not worded the way you would like to have the answer read.

DR. GELLER: I beg your pardon?

THE COURT: I say the summons is not worded to

produce the response that the respondent -- that the counsel for the respondent would like here. The summons said, "records of all transactions with or for the benefit of William Geller, records of stock transactions managed for the benefit of William Geller."

DR. GELLER: Your Honor, I disagree with you; I think the letter was very responsive.

THE COURT: I say --

DR. GELLER: The corporation is not --

THE COURT: This doesn't --

MR. COOK: Fine, Your Honor.

DR. GELLER: It only says he didn't make --

THE COURT: In any event, it's not admissible.

DR. GELLER: -- he didn't manage my business.

THE CLERK: Respondent's Exhibit AI is marked for identification.

THE COURT: Is that another summons, counsel?

MR. COOK: Yes, Your Honor.

THE COURT: Who is that summons to?

MR. COOK: Chemical Bank of New York.

THE COURT: Well, why is that admissible?

MR. COOK: It's admissible since it was issued by Special Agent Schulman --

THE COURT: I know, but that --

MR. COOK: -- and I intend to put on the bank,

the representative of the bank --

THE COURT: Is it my -- now you're putting on the bank here, is that what you're saying?

MR. COOK: Not with that summons, Your Honor, but we intend to, as being our next witness.

THE COURT: I say, I mean, what -- what has this summons proved?

MR. COOK: It's to show that Special Agent Schulman in the normal course of his investigative work served a summons on Chemical Bank to --

THE COURT: Yeah. All right.

MR. COOK: -- acquire certain documents which we intend to prove by the representative of Chemical Bank.

THE COURT: All right. For that limited purpose it will be received. Now, Mr. Schulman, you got ahold of the Merrill Lynch records, right?

THE WITNESS: Yes, Your Honor.

THE COURT: Well, did you ever try to find out what happened to these bonds?

THE WITNESS: I made inquiries --

THE COURT: Well, did you talk -- you never talked to Mr. Brown, for example, at Merrill Lynch?

THE WITNESS: I don't believe so, no.

THE COURT: No. You didn't find out who picked up the bonds?

THE WITNESS: No. I was hoping to find that out from Mr. Morris Geller.

THE COURT: I know, but why would he know?

THE WITNESS: Since it was addressed -- he was the only Geller at the address listed on the Bache brokerage account.

THE COURT: I see. So as far as you know, this may have been his money?

THE WITNESS: I was trying to definitely determine that, Your Honor.

THE COURT: And you weren't able to determine that, were you?

THE WITNESS: Not from -- not from Morris Geller.

THE COURT: Now, who could you determine that from, then?

THE WITNESS: From the other evidence I believe which indicated that --

THE COURT: Well, I mean, what evidence are you talking about? That's the thing that's puzzling me here is that you interviewed Mr. Solomon Geller and that was unproductive, wasn't it? There was nothing in the interview with him that would prove anything other than the fact that at that time you didn't know who was -- who had the -- the case of the missing two hundred and thirty thousand dollars?

THE WITNESS: I had determined this much as being untruths that I learned of Mr. Geller's representations during the course of my investigation.

THE COURT: Well, you haven't even shown me any representations by him, Mr. Schulman.

THE WITNESS: He -- to me in his -- in his meeting with me denied knowledge of ownership of the stock of 2377 Creston Corporation.

THE COURT: He still denies that. That's right. Now, I don't know on what --

THE WITNESS: My file, Your Honor, contains the Articles of Incorporation listing him and his wife and I believe his sister or his mother as the three officers in that order and the sole stockholders.

THE COURT: All right. Well, where is that record? Why hasn't somebody produced that?

THE WITNESS: I -- Your Honor, this is in no way any form of criticism, but I'm not running the -- the Government's --

THE COURT: Well, I --

THE WITNESS: -- presentation.

THE COURT: -- I've been asking that question since we started this morning.

MR. COOK: I haven't seen those -- those documents, Your Honor.

THE COURT: I see.

THE WITNESS: There is a copy of the Articles of Incorporation in -- in the Intelligence Division work files which I presented to the Government some days back.

THE COURT: So you've had Articles of Incorporation to show that Dr. Geller at least started out owning the stock, is that right?

THE WITNESS: That's right.

THE COURT: And you interviewed his brothers and to the extent that they were able to give you any information, it didn't indicate that there'd been any change in that ownership, is that what you're saying?

THE WITNESS: Yes.

THE COURT: I see. So, therefore, you assume that these withdrawals had been made by Dr. Geller?

THE WITNESS: Well, since during the course of my investigation, if I may expound, Your Honor, I found no one else who could -- who was operating the corporation, who was taking care of its day-to-day business, who was filing its returns, who was signing its checks, on that I -- I had to make the assumption that -- or I made the assumption that the evidence that I was able to gather indicated only one man operating and controlling and owning this corporation and that was William Geller.

THE COURT: So you decided that these withdrawals

must have been Dr. Geller's income, is that right?

THE WITNESS: Yes.

THE COURT: Okay.

DR. GELLER: May I ask him a question?

THE COURT: That sounds like a reasonable assumption, Dr. Geller.

RECROSS-EXAMINATION

BY DR. GELLER:

Q Now, I -- I'm not here -- and believe me, I don't want to criticize you, it's not my problem; I got plenty problems as it is, but don't you think in view of the fact that you were -- you were looking into a real estate composition here, to go to the tenants of that building and ask them who is running this business here, who is running it, who -- who's the boss here?

A I don't know what building you're making reference to, Dr. Geller.

Q I'm making to the -- see, 2377 Creston Corporation, the Court is asking your questions --

THE COURT: No, Dr. Geller at the time --

DR. GELLER: -- and you are answering the questions to the best of your ability.

THE COURT: -- we're talking here all this -- this corporation didn't even own a building.

DR. GELLER: Now, I -- I would say if I was in

your position --

THE COURT: Dr. Geller, we're talking about 1965 and 1966. You said the building had been sold in 1960. We're talking about --

DR. GELLER: But still it's the same tenants.

THE COURT: I know, but that has nothing --

DR. GELLER: Or taxes.

THE COURT: -- to do, this -- we're talking about a corporation that the only business it had was buying and selling securities, isn't that right? At least that's what your return says.

DR. GELLER: Are you not interested in the real estate? I see.

THE COURT: I don't know that in this business --

DR. GELLER: Pardon me. I didn't -- I'm sorry.

THE COURT: We don't -- we don't have any real estate.

DR. GELLER: Well, I figured if I would be in your position -- of course, I'm not an agent -- I would go to the tenants and find out who was running this business here --

THE COURT: Well, we had --

DR. GELLER: -- this is what the Judge asked you, what --

THE COURT: We have nothing to do with the

building, Dr. Geller, so, I mean, even accepting your expertise in these matters, and I'll admit you've had a lot of experience in this area, going back a long time, I mean, you don't come in here today as a neophyte, the answer is that the building was of no consequence. What we want to know is what happened to the missing two hundred and thirty thousand dollars.

DR. GELLER: I thought you wanted to know who the boss or who was running things.

THE COURT: This is the case of the missing --

DR. GELLER: I think there is a --

THE COURT: -- two hundred and thirty thousand dollars --

DR. GELLER: -- "colorer" here because they --

THE COURT: -- we have here today.

DR. GELLER: -- by finding out who was running the corporation --

THE COURT: It has nothing to do with it, so, have you got any other questions you want to ask this witness?

DR. GELLER: No, that's all.

THE COURT: Okay. Mr. --

DR. GELLER: I'm sorry that I --

THE COURT: I was afraid of that; these fellows never -- young fellows never know when to quit. Now, what

do you want?

MR. COOK: Your Honor, if we may, we have located a copy of the Certificate of Incorporation.

THE COURT: All right. Give it a number and it will be received.

THE CLERK: Respondent's Exhibit AJ is marked for identification.

THE COURT: It will be received. Now, Dr. Geller, we have the Certificate of Incorporation which shows that you --

DR. GELLER: I beg your pardon?

THE COURT: -- you started out owning all the stock in this company when it was incorporated; you had your sons on the payroll; you were signing the tax returns; you were having checks issued to you; you were on the signature card of the accounts of the corporation; there's no evidence that any of the stock was ever sold by you or transferred to anybody else. I would say that that just about finishes it, doesn't it?

DR. GELLER: Well, the only thing that you brought out here, that you pointed out, is that I was on the payroll --

THE COURT: You weren't on the payroll.

DR. GELLER: -- and I received a salary and I reported it.

THE COURT: Your -- why would your eighteen-year-old son be on the payroll if you didn't own the company?

DR. GELLER: Well, if he -- if --

THE COURT: What was he doing?

DR. GELLER: -- I was not on the payroll, I let him take the property. We can't both -- both at the same time, it's either I or he. Because I was ill and I didn't do any work there, I let him do the work and he got the -- he got the salary.

THE COURT: Do you have any --

DR. GELLER: Both of us weren't on the payroll.

THE COURT: -- further evidence, counsel?

MR. COOK: Yes, Your Honor. We'd like to call the representative from Chemical Bank.

THE COURT: The representative of the Chemical Bank? All right.

THE CLERK: You do solemnly swear that the testimony you're about to give the Court in this case shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Please be seated. Will you state your name and address, please?

THE WITNESS: Peter Burke, B-u-r-k-e. 549 Ninth Street, Brooklyn, New York.

EXHIBIT 17

U. S. TAX COURT
Pet's Ex:
Resp's Ex. AJ
FEB 25 1976
Marked for Identification ✓
Received in Evidence ✓
Docket No. 4046-73

CERTIFICATE OF INCORPORATION

OF

2377 CRESTON CORP.

Pursuant to Article 2 of the Stock Corporation Law.

State of New York)
County of New York) ss.:
City of New York)

W E, the undersigned, all being of full age and two-thirds of us being citizens of the United States, and residents of the State of New York, for the purpose of forming a business stock corporation, pursuant to and in conformity with the Laws of the State of New York, do hereby make, sign, acknowledge, certify and set forth as follows:

FIRST: That the name of the proposed corporation is 2377 CRESTON CORP.

SECOND: That the purposes for which said corporation is to be formed are:

To acquire, own, sell, lease and deal in real property, mortgages on real property, fixtures, chattels and goods in any wise relating to real property; build, erect, alter and repair structures and buildings; to deal in building materials and to contract for putting up of structures, buildings and alterations and repairs of the same; to borrow and lend money on mortgages and securities; to establish and maintain offices and agencies; to hire and employ labor and materials; to acquire, hold and dispose of stock, bonds and evidences of indebtedness of other corporations and to pay therefor in cash or in property; to make and execute contracts for the purchase and sale of real estate, buildings, materials and articles necessary therefor, operate and maintain same; to manage and operate buildings, real property, stores and dwellings as agent and representative and to receive and collect rents, income and profit

BEST COPY AVAILABLE

A-145

EXHIBIT A

thereof; to open, conduct, hold, acquire and manage any and all legitimate business, factories and establishments without limitation as may be done by any stock corporation under the laws of the State of New York excepting banking and insurance corporations.

THIRD: That the amount of capital stock of said corporation is Five Thousand ($5,000.) - - - - - - - Dollars all of which shall consist of common stock.

FOURTH: That the number of shares of which said capital stock shall consist is fifty (50) - - - - - shares, each of which shall be of the par value of One Hundred ($100.) Dollars.

FIFTH: That the principal business office is to be located in the Borough of Manhattan, City of New York, State of New York and County of New York.

SIXTH: That the duration of said corporation is to be perpetual.

SEVENTH: That at least one of the persons named hereinafter as a director is a citizen of the United States and a resident of the State of New York; and that the number of directors of said corporation is three , and that it shall not be necessary for a director to be a stockholder.

EIGHTH: That the names and post office addresses of the directors until the First Annual Meeting of the Stockholders are as follows:

Names:	Post Office Addresses:
WILLIAM GELLER	No. 135 Ridge Street Manhattan Borough, New York City
DORIS GELLER	No. 135 Ridge Street Manhattan Borough, New York City
REGINA STRASFELD	No. 16 Broome Street Manhattan Borough, New York City

7719 9/ -2-

EXHIBIT 11

A146

NINTH: That the names and post office addresses of the subscribers of the certificate, and the number of shares of stock which each agrees to take in said corporation are as follows:

Names:	Post Office Addresses:	No. of Shares:
WILLIAM GELLER	No. 135 Ridge Street Manhattan, New York City	One
DORIS GELLER	No. 135 Ridge Street Manhattan, New York City	One
REGINA STRASFELD	No. 16 Broome Street Manhattan, New York City	One

TENTH: That the Secretary of State of the State of New York is designated as agent for said corporation, upon whom process in any action or proceeding against it may be served within the State of New York; and the Secretary of State shall mail a copy of process in any action or proceeding against said corporation served upon him to the corporation at No. 135 Ridge Street, Borough of Manhattan, New York City.

IN WITNESS WHEREOF, We have signed, sealed and executed this Certificate this 28th day of December, 1950.

William Geller (LS)
Doris Geller (LS)
Regina Strasfeld (LS)

State of New York)
City of New York) ss.:
County of New York)

On this 28th day of December, 1950 before me personally appeared WILLIAM GELLER, DORIS GELLER and REGINA STRASFELD - - - - - - to me known and known to me to be the persons described in and who made, signed and executed the foregoing Certificate of Incorporation, and they severally before me acknowledged that they had made, signed, sealed and executed the same.

Roulla G. Sachs

Exhibit F

A147